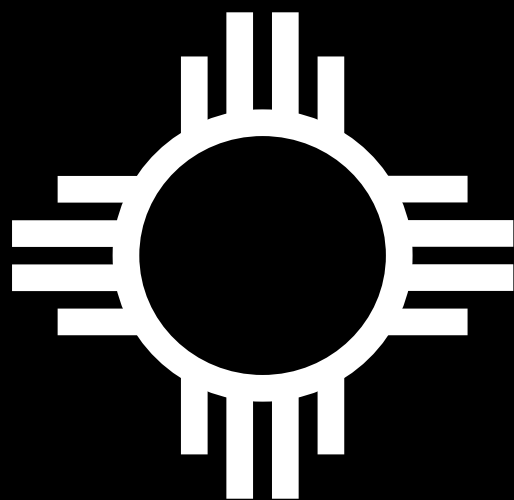


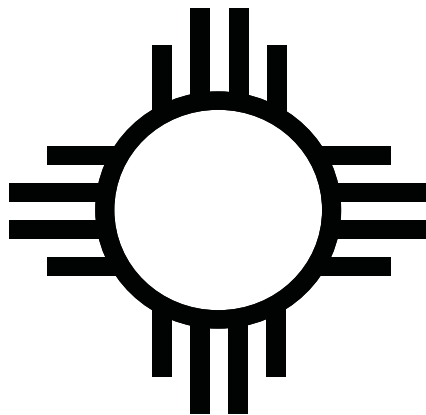
**NEW
MEXICO
REGISTER**



**Volume XXII
Issue Number 23
December 15, 2011**

New Mexico Register

**Volume XXII, Issue Number 23
December 15, 2011**



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

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Administrative Law Division
Santa Fe, New Mexico
2011

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New Mexico Register

Volume XXII, Number 23

December 15, 2011

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Notices of Rulemaking and Proposed Rules

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The New Mexico Human Services Department (HSD) public hearing scheduled for December 2, 2011 is **cancelled** and **rescheduled** for January 17, 2012. The public hearing will be held at 9:00 a.m. in the South Park Conference Room, 2055 S. Pacheco, Ste. 500-590 in Santa Fe, NM and concerns the renumbering and reformatting of Medical Assistance Division rules from the previous style and format to comply with the current NMAC style and format requirements. No content changes have been made. Public testimony and written comments of this action will only be accepted. Each rule will stand as is until such time as each is promulgated with proposed content changes.

Interested persons may submit written comments no later than 5:00 p.m., January 17, 2012, 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 <http://www.hsd.state.nm.us/mad/registers/2011> or by sending a self-addressed stamped envelope to Medical Assistance Division, Benefits Services Bureau, P.O. Box 2348, Santa Fe, NM, 87504-2348.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Case No. 11-00218-UT

IN THE MATTER OF THE COMMISSION ESTABLISHING A STANDARD METHOD FOR CALCULATING THE COST OF PROCURING RENEWABLE ENERGY, APPLYING THAT METHOD TO THE REASONABLE COST THRESHOLD, AND CALCULATING THE RATE IMPACT DUE TO RENEWABLE ENERGY PROCUREMENTS.

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission (NMPRC or Commission) proposes to amend Rule 17.9.572 NMAC (Rule 572) to establish a standardized methodology for calculating the cost of renewable energy for purposes of applying the Reasonable Cost Threshold (RCT) and for determining whether and how that cost should be used for ratemaking purposes. This matter comes before the Commission upon the Utility Division Staff's "Petition to Commence Rulemaking on Calculation of the Reasonable Cost Threshold and Updates to the Renewable Energy for Electric Utilities Rule." (Petition)

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission has the authority to promulgate the proposed rule amendments under the N.M. Const. art. XI, Section 2, and under NMSA 1978, Sections 8-8-4, 8-8-15, 62-16-4(C), 62-16-7(A), 62-16-8(B), and 62-16-9.
2. On June 15, 2011, the Commission filed its Order Initiating Rulemaking and Closing Docket (Order).
3. Pursuant to that Order, Staff filed the Petition and its proposed amendments to Rule 572, along with a proposed Notice of Proposed Rulemaking (NOPR).
4. In addition to amending the RCT calculation provisions of Rule 572, Staff proposed to use the rulemaking to remove outdated provisions of Rule 572 and to make several structural improvements to it. Furthermore, Staff proposed an amendment to Rule 572 to reflect a recent amendment to a section of the Renewable Energy Act (REA), NMSA 1978, Section 62-16-4(A)(3), which became law on June 17, 2011. The statute was amended to exempt certain political subdivisions from all charges by public utilities for renewable energy procurements if the political subdivision certifies that it will spend 2½ percent of annual electricity charges to develop renewable energy generation. A summary of the process Staff used to develop its proposed amended rule follows.
5. Staff circulated via email a preliminary message to interested parties explaining the process Staff would use to solicit comments on its proposed amended rule. Staff identified potentially interested parties as those individuals who had intervened in either Case No. 10-00373-UT (which was the Public Service Company of New Mexico's (PNM's) most recent Renewable Portfolio Standard (RPS) plan filing) or Case No. 10-00316-UT (which was a rulemaking concerning residential service of gas utilities, electric utilities, and rural electric cooperatives). Staff then received notices of interest from several additional individuals, who were added to Staff's email distribution.
6. Staff circulated its initial draft of a proposed amended rule and received initial comments from six entities: Western Resource Advocates (WRA), the New Mexico Attorney General, the New Mexico Rural Exchange Carriers Association, PNM, Sun Edison, and the New Mexico Industrial Energy Consumers. Their comments are summarized in the Petition at pages 4-5.
7. Staff took into account the comments received from interested parties, but due to fundamentally different approaches to the question of RCT calculation, it was not possible to develop consensus rule amendments.
8. Staff circulated its revised draft rule amendments to interested parties and requested statements of position or comments. WRA, the New Mexico Rural Exchange Carriers Association, PNM, and Southwestern Public Service Co. responded, and their comments are summarized in the Petition at pages 6-7.
9. After Staff filed the Petition, WRA filed proposals for its version of Rule 572, which it requested accompany the NOPR.
10. PNM filed a pleading that opposed WRA's request on the basis that it did not comply with Commission procedures or the Order.
11. The Commission should deny WRA's request. WRA may submit its proposed amendments to Rule 572 during the comment period on the NOPR or at the public

hearing.

12. The Commission has modified Staff's proposed rule amendments, pursuant to Paragraph 5 of the Order.

13. Rule 572 should be amended *inter alia* to establish a detailed, standard method consistent with the REA, NMSA 1978, Sub Section 62-16-1 to -10, for calculating the costs of purchasing or creating renewable energy for the purposes of applying the RCT, for determining whether and how those costs should be used for ratemaking purposes, and for defining the requirements of a fully diversified renewable energy portfolio. Rule 572 should also be amended to reflect the recent amendment of the REA, NMSA 1978, Section 62-16-4 (A) (3)(amended 2011).

14. This NOPR should constitute due and lawful notice to all potentially interested persons.

15. C o m m i s s i o n Rule 1.2.3.7(B) NMAC ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." In order to ensure compliance with Rule 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds that date shall be the earlier of thirty (30) days following the **February 8, 2012, Public Hearing**, that is, **March 9, 2012**, or the date a Final Order is issued in this case. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rule amendments or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

16. The proposed rule amendments to be considered for promulgation are attached hereto as Exhibit 1. Proposed deletions are struck through; proposed additions are underlined. Additional copies of the proposed rule amendments can be obtained from:

Mr. Nick Guillen
NMPRC Records Management Bureau
1120 Paseo de Peralta
Santa Fe, New Mexico 87501

or

Mr. Nick Guillen
NMPRC Records Management Bureau
P.O. Box 1269

Santa Fe, New Mexico 87504-1269
or by calling 505-827-4366.

IT IS THEREFORE ORDERED:

A. Staff's Petition for a rulemaking proceeding to amend Rule 17.9.572 NMAC is granted; WRA's request to issue its proposed amendments with the NOPR is denied.

B. The rulemaking proceeding shall be, and hereby is, instituted in this Docket and shall concern whether and how this Commission's Rule titled "Renewable Energy for Electric Utilities," Rule 17.9.572 NMAC, should be amended.

C. This *Notice of Proposed Rulemaking* constitutes due and lawful notice to all potentially interested persons.

D. Any person wishing to comment on the proposed amendments to Rule 17.9.572 NMAC may do so by submitting written comments no later than **December 27, 2011**. Any person wishing to respond to comments may do so by submitting written response comments no later than **January 24, 2012**. Comments suggesting changes to the rule amendments as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule amendments shall be provided in a form consistent with that of the existing rule.

E. The caption of this case shall be changed to read: "In the matter of the adoption of amendments to Rule 17.9.572 NMAC, Renewable Energy for Electric Utilities." All pleadings, including comments, shall bear this caption and case number 11-00218-UT and shall be filed with the Commission's Records Division, at either of the addresses set out in paragraph 16 above.

F. A public hearing on the proposed rule amendments, to be presided over by the Commission or its designee, shall be held beginning at **8:30 a.m. on February 8, 2012**, at the offices of the Commission, at the following location:

4th Floor Hearing Room
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Tel. 505-827-4366

The hearing will be held in order to receive oral comments and to clarify or supplement the written comments. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

G. All persons providing public comment and/or participating in the public hearing are encouraged to

provide specific comments on the proposed rule amendments. Commenters are also encouraged to address any other topic that may be relevant to this rulemaking.

H. Interested persons should contact the Commission to confirm the date, time, and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Ms. Cecilia Rios at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

I. Pursuant to NMSA 1978, Section 8-8-15(B) (amended 2001), at least thirty days prior to the hearing date, this *Notice of Proposed Rulemaking*, including Exhibit 1, shall be mailed to all persons who have made a written request for advance notice and shall be published without Exhibit 1 in at least two newspapers of general circulation in New Mexico and in the NEW MEXICO REGISTER. Affidavits attesting to the publication of this *Notice of Proposed Rulemaking* as described above shall be filed in this Docket.

J. Copies of this *Notice of Proposed Rulemaking*, including Exhibit 1, shall be e-mailed to all persons listed on the attached Certificate of Service if their email addresses are known, and if not known, mailed to such persons via regular mail.

K. This *Notice of Proposed Rulemaking* shall be posted on the Commission's official Web site.

L. Copies of any forthcoming final order adopting rule amendments shall be mailed, along with copies of the amended rule, to all persons and entities appearing on the Certificate of Service as it exists at the time of issuance of the final order in this Docket, to all commenters in this case, and to all individuals requesting such copies.

M. This *Notice of Proposed Rulemaking* is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 22nd day of November, 2011.

NEW MEXICO PUBLIC REGULATION COMMISSION
PATRICK H. LYONS, CHAIRMAN
THERESA BECENTI-AGUILAR,
VICE CHAIR
JASON A. MARKS, COMMISSIONER
DOUGLAS J. HOWE, COMMISSIONER
BEN E. HALL, COMMISSIONER

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION) Case No. 11-00420-TR-RR
OF FURTHER AMENDMENTS TO THE)
COMMISSION’S RULES REGARDING)
RAILROADS AND RAILROAD SAFETY)

NOTICE OF PROPOSED RULEMAKING AND HEARING NOTICE

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission (“NMPRC” or “Commission”) proposes to amend its rules regarding railroads and railroad safety that are currently codified in the New Mexico Administrative Code (“NMAC”) at 18.14.2 NMAC. This matter comes before the Commission upon the Petition for Amendment of 18.14.2 NMAC, filed on September 30, 2011 by BNSF Railway Company and Union Pacific Railroad Company; *whereupon*, having considered that Petition and the responses thereto, and being fully advised,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission is charged, among other things, with enforcing railroad safety as provided by NMSA 1978, § 63-7.1-1(A)(4), consistent with the Commission’s jurisdiction as provided in the New Mexico Constitution, Art. XI, § 2, and other applicable law.
2. On September 8, 2011, the Commission issued its *Final Order* in Case No. 09-00261-TR-RR, adopting a final rule that has since been duly published in the *NEW MEXICO REGISTER* and became effective on September 30, 2011.
3. The BNSF Railway Company and Union Pacific Railroad Company (“the Class I Railroads”) appealed the *Final Order* in Case No. 09-00261-TR-RR to the New Mexico Supreme Court. Subsequently, after discussion with representatives of the Commission’s Transportation Division Staff and counsel for the Commission, the Class I Railroads and the Commission filed a joint motion to stay the appeal until the conclusion of the parties’ efforts to resolve their differences administratively.
4. On September 30, 2011, in Case No. 11-00371-TR-RR, the Class I Railroads filed their Petition for Amendment of 18.14.2 NMAC (“Petition”). Pursuant to 1.2.2.35(A)(1)(d) NMAC, we take administrative notice of the entire record in Case No. 11-00371-TR-RR. As the result of the *Order Partially Granting Requested Interim Waivers and Variances* that we issued on November 3, 2011, the Railroads’ Petition for Amendment of 18.14.2 NMAC is now before us in this Docket. In their Petition, the Class I Railroads request that we adopt several amendments to the final rule we adopted on September 8, 2011 in Case No. 09-00261-TR-RR. In particular, the Railroads ask that we amend 18.14.2 NMAC by repealing subparts 18.14.2.11(B), (C), (D), and (E). They also ask that we repeal 18.14.2.13 NMAC, or, in the alternative, amend it to clarify the scope of “changes” [to lines and grade crossings] which must be reported annually.
5. The Class I Railroads also ask us to amend 18.14.2.9 NMAC by clarifying that the adoption of the clearances standards of the AREMA Clearances Manual will apply only to “prospective construction[;]” and they ask that we add a provision in 18.14.2.12[D] NMAC clarifying that release of [accident] reports will not waive what they assert to be a federal privilege from disclosure of these reports in discovery or admissibility at trial.
6. With regard to 18.14.2.9 NMAC, the Class I Railroads would have the rule explicitly state that clearance standards pertain to construction begun after January 1, 2012. Paragraph 41 of the September 8, 2011 Final Order in Case No. 09-00-261-TR-RR unambiguously states that the new clearance standards are to be applied prospectively only, but some clarification in the rule itself may be desirable. Therefore, the Commission’s Proposed Rule includes a clarification on this issue.
7. With regard to 18.14.2.11(B)-(D) NMAC, the Class I Railroads would completely revise the procedures and requirements for opening and closing of crossings, based on a claim that this Commission lacks jurisdiction to apply the existing final rule as adopted. The Class I Railroads argue that authority over the construction and closure of roads crossing railroad tracks, and therefore of road crossings, is exclusively vested in the government agency with authority over public roads, or with the owner of a private road; and that this Commission has no constitutional or statutory authority to order the construction or closure of roads, and therefore has no constitutional or statutory authority to order the construction or closure [of] road crossings. Based on that argument, the Railroads ask us to overhaul 18.14.2.11(B)-(D) NMAC by revising, not only procedures and requirements for opening and closing of crossings, but the entire approach we adopted in Case No. 09-00261-TR-RR, where

we considered a similar argument but did not find it persuasive. Because we again find that the rule is jurisdictional to this Commission and was lawfully adopted, we decline to adopt the Railroads’ desired language for purposes of our Proposed Rule. (In support of their Petition, the Class I Railroads present several arguments, starting with the truism that actions of an administrative body that exceed its authority are void, and ending with the curious assertion that “The Commission’s arguments in its Order attempting to establish its authority lack merit.” Ptn., pp. 8, 11-12. Inasmuch as our Final Order does not constitute argument but, rather, findings, conclusions and orders, we find the last assertion to be misplaced within a petition for relief.)

8. With regard to 18.14.2.11(E) NMAC, the Class I Railroads ask that we withdraw the requirement for posting of USDOT mile post numbers and letters at each public crossing in New Mexico, especially in view of a pending Federal Railroad Administration rulemaking pertaining to the posting of milepost numbers and letters that they report is taking place before the federal railroad administration at this time, pursuant to 49 U.S.C. § 20152 (a) (5)(C). (Neither party has cited the docket number of the federal rulemaking, which would be helpful to the Commission.) The Railroads also argue that our rule is preempted by 49 U.S.C. § 20152, and that use of USDOT mile post numbers and letters is undesirable as a means of identifying road crossings. We need not address those arguments here; it suffices for practical purposes to note the reported pendency of a federal rulemaking concerning signage. Our Proposed Rule would delete the mile post requirement but retain the reference to USDOT identification overall.

9. With regard to 18.14.2.12(A)-(B) NMAC, the Class I Railroads would, apparently, delete the word “immediately” before the word “report” in reference to accident/incident reporting to various state agencies. (We do not find this request plainly set out in the Class I Railroads’ waiver petition or in their rulemaking petition. It does, however, surface in the Commission’s Transportation Division Staff’s October 17, 2011 Response to Petitioners’ Request for Interim Waiver of or Variance from 18.14.2.11, 18.14.2.12, and 18.14.2.13 NMAC and Petition for Waiver or Variance (“Response”), on the third (unnumbered) page thereof. We assume that the request came about in some informal discussion between the Class I Railroads and Staff. We have already deemed it appropriate to address a possible change of wording; *see Order*, 09/08/11, in Case No. 11-00371-TR-RR. In addition, Staff’s Response states that it might not oppose replacing the word “immediately” in this rulemaking.)

Our Proposed Rule replaces the word "immediately" with the word "promptly" in 18.14.2.12(A) but leaves the word "immediately" in place in 18.14.2.12(B), as reflecting an appropriate sequence for dealing with an accident/incident involving a railroad car carrying hazardous material. We do this notwithstanding our ruling, in the September 8, 2011 Order in Case No. 11-00371-TR-RR, that the Railroads' request for interim waiver or variance from both 18.14.2.12(A) and (B) NMAC should be granted. See Order at ¶10. This is because 18.14.2.12(B) deals, not with reporting to our Staff, but, rather, with reporting to the New Mexico State Police and to the New Mexico Environment Department – both agencies with direct emergency responsibilities in situations involving hazardous materials. In addition, we believe that reporting to local law enforcement and tribal police are basic requirements that should be part of our rule.

10. The Class I Railroads request that we add a provision to 18.14.2.12(C) NMAC clarifying that release of [accident] reports will not waive what they assert to be a federal privilege from disclosure of these reports in discovery or admissibility at trial. According to the Railroads, 49 U.S.C. § 20903 and 23 U.S.C. § 409 create a statutory privilege. While we are not as yet convinced that the asserted privilege would extend to the type of reporting that we require under 18.14.2.12 NMAC, our Proposed Rule adds the requested provision, at 18.14.2.12[D] NMAC.

11. With regard to 18.14.2.13 NMAC, in reference to our rule's requirement for annual filing of maps and profiles, the Class I Railroads would eliminate the requirement to report changes to lines and grade crossings in New Mexico since the previous filing. They argue that this information is available publicly through the National Highway-Rail Crossing Inventory, and that there are pending regulations to be promulgated under 29 U.S.C. § 20160 which appear likely to require railroads to maintain that inventory and to update any changes within six (6) months. Ptn. at 13. Our Proposed Rule adds an option to make these materials available electronically and would incorporate by reference the National Highway-Rail Crossing Inventory, provided that the Railroads and Staff agree on a complete citation for that inventory.

12. We find many of the Class I Railroad's requests for waiver or variance to be reasonable. A new rulemaking proceeding should be initiated in order to provide for possible further amendments to the Commission's Railroad Safety Rules.

IT IS THEREFORE ORDERED:

A. A new proceeding is hereby opened for the purposes of the

Commission's consideration of further amendments to its Railroad Safety Rules as currently set forth at 18.14.2 NMAC. The Commission's Proposed Rule for comment is attached hereto as Exhibit 1.

B. A hearing shall be held before the Commission for the purpose of receiving oral comments on the Commission's Proposed Rule, at the following time and place:

Thursday, January 12, 2012, beginning at 1:30 P.M.

**4th Floor Hearing Room
1120 Paseo de Peralta
Santa Fe, New Mexico 87501**

C. Written comments on the Commission's Proposed Rule may be submitted until and through December 22, 2011. Written responses to the comments may be submitted until and through January 5, 2012. The record shall close on January 26, 2010.

D. This Order is effective immediately.

E. Copies of this Order shall be served via e-mail upon all persons listed on the attached Certificate Of Service (which includes all persons listed on the Certificate Of Service for the Final Order issued in Case No. 09-00261-TR-RR, as well as all persons who have since requested inclusion), and shall otherwise be served via regular mail. Any interested person may request addition to the official Certificate Of Service for this case, consistent with the timelines to be established in forthcoming procedural orders.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 8th day of November, 2011.

NEW MEXICO PUBLIC REGULATION COMMISSION

PATRICK H. LYONS, CHAIRMAN

THERESA BECENTI-AGUILAR, VICE CHAIR

JASON A. MARKS, COMMISSIONER

BEN L. HALL, COMMISSIONER

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

TRAINING AND RECRUITING DIVISION

Law Enforcement Academy

Notice

**NEW MEXICO DEPARTMENT OF PUBLIC SAFETY
NM LAW ENFORCEMENT ACADEMY
BOARD MEETING AND PUBLIC HEARING**

On Tuesday January 17, 2012 at 9:00 a.m., the New Mexico Law Enforcement Academy Board will hold a Regular Board Meeting to include a Public Hearing. The Public Hearing will include 10.29.10.8 Minimum Standards: Public Safety Telecommunicators, Emergency Communicators and Telecommunicator Training .

The NMLEA Board Meeting and public hearings will be held at New Mexico Law Enforcement Academy, 4491 Cerrillos Rd. Santa Fe, NM 87507

Copies of the Regular Board Meeting Agenda's and proposed rule changes may be obtained by accessing our website at www.dps.nm.org/training or by calling Gil Najar at (505) 827-9265 or Marissa Tapia at (505) 827-9259.

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an emergency amendment to 8.15.2 NMAC, Section 17, effective 12/1/11.

8.15.2.17 PAYMENT FOR SERVICES: The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child’s enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the eligibility period as indicated by the child care placement agreement expires during the month, including the end of a school semester; or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. When the client requests a change of provider, regardless of the reason, payment will be made through the final day of the expiration of the 14 calendar day notice issued to the provider. Payment to the new provider begins on the day care begins.

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

D. The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 20-29 hours per week per month	Care provided for an average of 6 -19 hours per week per month	Care provider for an average of 5 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

E. Out of school time care provided by licensed child care providers who provide care for 6-19 hours per week are paid at the 75% rate (part time 1).

F. Out of school time care provided by licensed child care providers who provide care for 20 or more hours per week are paid at the 100% rate (full time).

G. Out of school time care provided for 5 hours or less per week are paid at the 25% rate (part time 3) regardless of provider type.

H. Monthly reimbursement rates: [The table below reflects a decrease in monthly provider reimbursement rates in response to a significant budget shortfall in FY 2011. The department will reevaluate its financial situation prior to June 30, 2011, which is the end of the state fiscal year 2011, and determine whether it will be possible to increase reimbursement rates for the following fiscal year.]

Licensed child care centers								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
	Infant	[\$457.32] \$476.37	[\$402.00] \$418.75	[\$342.99] \$357.28	[\$301.50] \$314.06	[\$228.66] \$238.19	[\$201.00] \$209.38	[\$114.33] \$119.09
Toddler	[\$408.69] \$425.72	[\$374.04] \$389.63	[\$306.52] \$319.29	[\$280.53] \$292.22	[\$204.35] \$212.86	[\$187.02] \$194.81	[\$102.17] \$106.43	[\$93.51] \$97.41
Pre-school	[\$379.21] \$395.01	[\$348.50] \$363.02	[\$284.41] \$296.26	[\$261.37] \$272.27	[\$189.60] \$197.51	[\$174.25] \$181.51	[\$94.80] \$98.75	[\$87.12] \$90.76
School age	[\$331.81] \$345.64	[\$319.64] \$332.96	[\$248.86] \$259.23	[\$239.73] \$249.72	[\$165.91] \$172.82	[\$159.82] \$166.48	[\$82.95] \$86.41	[\$79.91] \$83.24
Licensed group homes (capacity: 7-12)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
	Infant	[\$363.85] \$379.01	[\$341.72] \$355.96	[\$272.89] \$284.26	[\$256.29] \$266.97	[\$181.92] \$189.51	[\$170.86] \$177.98	[\$90.96] \$94.75
Toddler	[\$330.17] \$343.93	[\$322.78] \$336.23	[\$247.63] \$257.95	[\$242.09] \$252.17	[\$165.09] \$171.97	[\$161.39] \$168.12	[\$82.54] \$85.98	[\$80.70] \$84.06
Pre-school	[\$324.56] \$338.08	[\$317.57] \$330.81	[\$243.42] \$253.56	[\$238.18] \$248.10	[\$162.28] \$169.04	[\$158.79] \$165.40	[\$81.14] \$84.52	[\$79.39] \$82.70

School age	[\$320.19] \$333.53	[\$310.59] \$323.53	[\$240.14] \$250.15	[\$232.94] \$242.65	[\$160.09] \$166.77	[\$155.29] \$161.77	[\$80.05] \$83.38	[\$77.65] \$80.88
Licensed family homes (capacity: 6 or less)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	[\$350.59] \$365.20	[\$328.90] \$342.60	[\$262.94] \$273.90	[\$246.67] \$256.95	[\$175.30] \$182.60	[\$164.45] \$171.30	[\$87.65] \$91.30	[\$82.22] \$85.65
Toddler	[\$312.08] \$325.08	[\$307.24] \$320.04	[\$234.06] \$243.81	[\$230.43] \$240.03	[\$156.04] \$162.54	[\$153.62] \$160.02	[\$78.02] \$81.27	[\$76.81] \$80.01
Pre-school	[\$311.20] \$324.17	[\$304.40] \$317.09	[\$233.40] \$243.13	[\$228.30] \$237.81	[\$155.60] \$162.09	[\$152.20] \$158.54	[\$77.80] \$81.04	[\$76.10] \$79.27
School age	[\$306.51] \$319.28	[\$297.25] \$309.64	[\$229.88] \$239.46	[\$222.94] \$232.23	[\$153.25] \$159.64	[\$148.63] \$154.82	[\$76.63] \$79.82	[\$74.31] \$77.41
Registered homes and in-home child care								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	[\$267.59] \$278.74	[\$247.68] \$258.00	[\$200.69] \$209.06	[\$185.76] \$193.50	[\$133.80] \$139.37	[\$123.84] \$129.00	[\$66.90] \$69.69	[\$61.92] \$64.50
Toddler	[\$253.44] \$264.00	[\$208.98] \$217.69	[\$190.08] \$198.00	[\$156.74] \$163.27	[\$126.72] \$132.00	[\$104.49] \$108.85	[\$63.36] \$66.00	[\$52.25] \$54.42
Pre-school	[\$232.32] \$242.00	[\$211.20] \$220.00	[\$174.24] \$181.50	[\$158.40] \$165.00	[\$116.16] \$121.00	[\$105.60] \$110.00	[\$58.08] \$60.50	[\$52.80] \$55.00
School age	[\$232.32] \$242.00	[\$190.08] \$198.00	[\$174.24] \$181.50	[\$142.56] \$148.50	[\$116.16] \$121.00	[\$95.04] \$99.00	[\$58.08] \$60.50	[\$47.52] \$49.50

I. The department pays a differential rate according to the location of the provider, license or registration status of the provider, national accreditation status of the provider if applicable, Star level status of the provider if applicable, and in accordance with the rate established for metro or rural location of the provider. Providers located in the metropolitan statistical areas of the state as determined by the U.S. census bureau receive the metropolitan rate. These include Bernalillo, Sandoval, Valencia, Santa Fe, Los Alamos, Dona Ana, and San Juan counties. All other providers receive the rural rate.

J. Providers holding national accreditation status receive an additional ~~[\$126.72]~~ \$132.00 per child per month for full time care above the metro rate for type of child care (licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement. The provider is required to notify the department immediately when a change in accreditation status occurs.

K. The department pays a differential rate to providers achieving higher Star levels as follows: 2-Star at ~~[\$43.20]~~ \$45.00 per month per child for full time care above the base reimbursement rate; 3-Star at ~~[\$67.20]~~ \$70.00 per month per child for full time care above the base reimbursement rate; 4-Star at ~~[\$100.32]~~ \$104.50 per month per child for full time care above the base reimbursement rate, and 5-Star at ~~[\$126.72]~~ \$132.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the level demonstrated.

L. The department pays a differential rate equivalent to 5, 10, or 15% of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%
	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

M. If a significant change occurs in the client's circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

N. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

O. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six to 12 month certification period. The client's certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 02/14/05; A, 08/31/06; A/E, 08/15/07; A, 06/30/10; A/E, 11/01/10; Re-pr, 12/30/10; A/E, 12/01/11]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.1 NMAC, Section 12, effective 01/01/2012.

16.4.1.12 ADVERTISING:

A. Statement of policy: It is the policy of the board that advertising by licensed practitioners of chiropractic should be regulated in order to fulfill the duty of the state of New Mexico to protect the health, safety and welfare of its residents, while not abridging any rights guaranteed to the practitioners or to the public by the Constitution of the United States and the Constitution of the state of New Mexico as construed by the United States supreme court and the New Mexico supreme court. To that end, the board permits the dissemination of legitimate information to the public concerning the science of chiropractic and individual practitioners thereof. Such dissemination of information must be done in accordance with this rule which is designed to reasonably facilitate the flow of accurate information and prevent fraudulent, false, deceptive, misleading or confusing advertising. Advertising not contrary to the prohibitions in this rule shall be deemed an appropriate means of informing the public of the availability of professional services.

B. Certain advertising prohibited:

(1) Any chiropractor who disseminates or causes to be disseminated or allows to be disseminated any advertising which is in any way fraudulent, false, deceptive, misleading or confusing, shall be deemed to be in violation of the Chiropractic Physician Practice Act.

(2) Fraudulent, false, deceptive, misleading or confusing advertising includes, but is not limited, to:

(a) advertising which contains a misrepresentation of any fact or facts;

(b) advertising which, because of its contents or the context in which it is presented, fails to disclose relevant or material facts or makes only partial disclosure of relevant or material facts;

(c) advertising which makes claims of, or conveys the impression of superior professional qualifications which cannot be substantiated by the chiropractor;

(d) advertising which contains distorted claims or statements about any individual chiropractor, chiropractic group or chiropractic office, clinic or center;

(e) advertising which creates unjustified expectations of beneficial treatment or successful cures;

(f) advertising which guarantees the results of any service, painless treatment, or which promises to perform any procedure painlessly;

(g) advertising which in any way appeals to fears, ignorance or anxieties regarding a persons state of health or physical or mental well-being;

(h) advertising which in any way intimidates or exerts undue pressure on the recipient;

(i) advertising which fails to conspicuously identify the chiropractor or chiropractors referred to in the advertising as practitioners of chiropractic by use of the term "chiropractor", "chiropractors", "chiropractic", "chiropractic physician", "chiropractic physicians", "doctor of chiropractic", or "doctors of chiropractic";

(j) advertising which fails to be conspicuously identified as "chiropractic" advertising;

(k) advertising which fails to conspicuously identify the chiropractic practice, office, clinic or center being advertised by a name which includes the term "chiropractor", "chiropractors", "chiropractic", "chiropractic physician", "chiropractic physicians", "doctor of chiropractic" or "doctors of chiropractic";

(l) advertising which invades the field of practice of other healthcare practitioners when the chiropractor is not licensed to practice such profession;

(m) advertising which appears in a classified directory or listing, or otherwise under a heading which, when considered alone or together with the advertisement, does not accurately convey the professional status of the chiropractor or the professional services being advertised;

(n) advertising which concerns a transaction that is in itself illegal;

(o) advertising which employs testimonials which, by themselves or when taken together with the remainder of the advertisement intimidate, exert undue pressure on, or otherwise improperly influence the recipient.

C. Advertising which offers gratuitous services or discounts in connection with professional services; provided, however, that advertising may offer gratuitous services or discounts if:

(1) such advertising clearly and conspicuously states whether or not additional charges may be incurred for related services which may be needed or appropriate in individual cases, and the possible range of such additional charges if such charges may be incurred;

(2) such advertising is not otherwise false, fraudulent, deceptive, misleading or confusing;

(3) such advertising offering a "spinal examination" or "scoliosis examination" or using any other similar phrase includes, at a minimum, the following tests or procedures: blood pressure, weight, height, reflexes, pulse, range of motion and orthopedic tests appropriate to the history; and

(4) such advertising offering "an examination" or using any other similar phrase includes the taking of a history of the patient as it relates to the presenting complaints, and a comprehensive neurological, orthopedic, chiropractic and physical examination including, where necessary, the taking, developing and interpretation of x-rays and the performance and interpretation of laboratory or other specialized tests when necessary to establish a diagnosis; such x-rays and laboratory and other specialized tests must constitute a diagnostically complete study.

D. Advertisements may quote fixed prices for specific routine services if such advertising clearly and conspicuously states whether or not additional charges may be incurred for related services and the possible range of such additional charges if such charges may be incurred. A routine service is one which is not so unique that a fixed rate cannot meaningfully be established.

E. Chiropractors, their agents or any representatives who engage in telemarketing are required to inform the parties they call at the beginning of the call:

(1) who they are (caller's name);

(2) who they represent (clinic/doctor); and

(3) chiropractors, their agents or representatives engaging in telemarketing, either directly or through others, shall keep a voice recorded log of all phone call conversations and a written log to include date, telephone number, and the name of every person called; all such chiropractors, their agents or representatives shall keep such logs for a period of three years from the date of the telemarketing.

F. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall misrepresent to the person called any association with an insurance company or another chiropractor or group of chiropractors, nor shall such solicitor promise successful chiropractic treatment of injuries, or make any other misrepresentation of whatever kind for the purpose of selling chiropractic services.

G. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall engage in such practices during hours prohibited by applicable municipal ordinance or state law, or in the absence of either, then other than between the hours 9

a.m. and 8 p.m. local time.

H. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall make more than one telephone call to any telephone number unless requested by the recipient to call again.

I. No chiropractor shall advertise directly or indirectly, through any device or artifice, that the advertising chiropractor will not collect from any prospective patient, that patient's insurance deductible or co-payment obligations arising by virtue of any medical insurance policy provided for the payment, in whole or in part, of any chiropractor's charge. The words free initial consultation must be explicitly explained what a consultation consist of and at exactly what point charges begin to accrue with clear delineation between a free consultation and an exam with treatment for which services will be charged. At no time can any representation in regards to payment for services be misleading to the consumer or patient and it must be stated up front that if the patient decides to accept the care that they will be charged for all services and that payment will be expected whether it be from the patient, third-party payor, insurance, or medpay. ~~[The terms no cost to you, or no charge for services, or free treatment or any verbiage insinuating free care shall not be utilized in any form of marketing, from public record including but not limited to police reports.]~~

J. No applicant for licensure to practice chiropractic, and no unlicensed practitioner, shall advertise chiropractic services in this state in any way.

K. All advertisements by a chiropractor must include the full name of the chiropractor as it appears on his or her chiropractic license followed by the letters D.C. or the designation "chiropractor", "chiropractic physician" or "doctor of chiropractic".

L. Any form of solicitation offered to individuals whose identities are known through the use of any form of public record, including but not limited to police reports, shall be reviewed and approved by the board and re-approved annually. Unless specifically disapproved by the committee designated by the board the copy submitted may be used for patient solicitation. If approved or disapproved, that information shall be communicated to the submitting doctor within 30 days of submission. The submitting physician has the right to request a determination be made by the full board at its next scheduled meeting. The board holds the right during each renewal cycle to complete a random audit of all written materials, and mandatory voice recordings of all phone conversations for a period up to three years following any telemarketing procedures from public record.

M. Any direct, individual contact by a licensee or the agent of a licensee with prospective patients through the use of public records, including but not limited to police or accident reports is prohibited.

[3/1/72, 2/27/87, 9/18/80, 3/5/93, 10/31/93, 11/16/97, 10/31/98; 16.4.1.12 NMAC - Rn & A, 16 NMAC 4.1.12, 1/15/2005; A, 4/10/06; A, 11/13/2011; A, 01/01/2012]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.302.2 NMAC, Sections 8, 10, 11 and 12 effective December 15, 2011.

8.302.2.8 MISSION STATEMENT: ~~[To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.] To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.~~

[2/1/95; 8.302.2.8 NMAC - Rn, 8 NMAC 4.MAD.002, 5/1/04; A, 5/1/10; A, 12/15/11]

8.302.2.10 BILLING INFORMATION:

A. **Billing for services:** MAD only makes payment to a provider or to the following individuals or organizations for services:

(1) a government agency or third party with a court order, based on a valid provider payment assignment; see 42 CFR Section 447.10(d)(e); or

(2) a business agent, such as billing service or accounting firm that provides statements and receives payment in the name of the provider; the agent's compensation must be related to the cost of processing the claims and not based on a percentage of the amount that is billed or collected or dependent upon collection of the payment.

B. **Billing for services from group practitioners or employers of practitioners:** MAD may make payments to a group practice and to an employer of an individual practitioner if the practitioner is required to turn over his fees to the employer as a condition of employment. See 42 CFR 447.10(g) (2)(3). MAD may make payments to a facility where the services are furnished or to a foundation, plan, or similar organization operating as an organized health care delivery system if the facility, foundation, plan, or organization is required by contract to submit claims for an individual practitioner.

C. **Billing for referral services:** A referring provider must submit to

the provider receiving the referral, specimen, image, or other record, all information necessary for the provider rendering the service to bill MAD within specified time limits. An eligible recipient or their personal representative or MAD is not responsible for payment if the provider rendering the service fails to obtain this information from the referring provider.

D. **Hospital-based services:** For services that are hospital based, the hospital must provide MAD recipient eligibility and billing information to providers of services within the hospital, including professional components, hospital emergency room physicians, hospital anesthesiologists, and other practitioners for whom the hospital performs admission, patient registration, or the patient intake process. An eligible recipient, their personal representative, or MAD is not responsible for payment if the hospital-based provider does not obtain this information from the hospital as necessary to bill MAD within the specified time limits.

E. **Coordinated service contractors:** Some MAD services are managed by a coordinated service contractor. Contracted services may include behavioral health services, dental services, physical health services, transportation, pharmacy or other benefits as designated by the medical assistance division. The coordinated service contractor may be responsible for any or all aspects of program management, prior authorization, utilization review, claims processing, and issuance of remittance advices and payments. A provider must submit claims to the appropriate coordinated service contractor as directed by MAD.

F. **Reporting of service units:** A provider must correctly report service units.

(1) For current procedural terminology (CPT) codes or healthcare common procedural coding system (HCPCS) codes that describe how units associated with time should be billed, providers are to follow those instructions.

(2) For CPT or HCPCS for services for which the provider is to bill 1 unit per 15 minute or per hour of service, the provider must follow the chart below when the time spent is not exactly 15 minutes or 1 hour.

[Continued on page 791]

<u>time spent</u>	<u>number of 15-minute units that may be billed</u>	<u>number of 1-hour units that may be billed</u>
<u>Less than 8 minutes</u>	<u>0</u> <i>services that are in their entirety less than 8 minutes cannot be billed.</i>	<u>0</u> <i>services that are in their entirety less than 8 minutes cannot be billed.</i>
<u>8 minutes through 22 minutes</u>	<u>1</u>	<u>.25</u>
<u>23 minutes through 37 minutes</u>	<u>2</u>	<u>.5</u>
<u>38 minutes through 52 minutes</u>	<u>3</u>	<u>.75</u>
<u>53 minutes through 67 minutes</u>	<u>4</u>	<u>1</u>
<u>68 minutes through 82 minutes</u>	<u>5</u>	<u>1.25</u>
<u>83 minutes through 97 minutes</u>	<u>6</u>	<u>1.5</u>

(3) Only time spent directly working with an eligible recipient to deliver treatment services is counted toward the time codes.

(4) Total time spent delivering each service using a timed code must be recorded in the medical record of each eligible recipient. If services provided are appropriately described by using more than one CPT or HCPCS code within a single calendar day, then the total number of units that can be billed is limited to the total treatment time. Providers must assign the most units to the treatment that took the most time.

(5) The units for codes do not take precedence over CMS's national correct coding initiative (NCCI).

(6) Anesthesia units must be billed according to 8.310.5 NMAC, *Anesthesia Services*.

(7) Units billed by a home and community-based services waiver provider, a behavioral health provider, an early intervention provider, and all rehabilitation services providers must also follow the requirements of this section unless exceptions are specifically stated in published MAD program rules or provider billing instructions.

[2/1/95; 8.302.2.10 NMAC - Rn, 8 NMAC 4.MAD.702.1, 5/1/04; A, 7/1/05; A, 5/1/10; A, 12/15/11]

8.302.2.11 BILLING AND CLAIMS FILING LIMITATIONS:

A. Claims must be received within the MAD filing limits as determined by the date of receipt by MAD or its selected claims processing contractor.

(1) Claims for services must be received within 90 calendar days of the date of service unless an alternative filing limit is stated within this section.

(2) Inpatient hospital and other inpatient facility claims must be received within 90 calendar days of the date of the eligible recipient's discharge, transfer, or otherwise leaving the facility.

(3) When the provider can document that a claim was filed with another primary payer including medicare, medicaid managed care organizations, medicare replacement plans, or another insurer, the claim must be received within 90 calendar days of the date the other payer paid or denied the claim as reported on the explanation of benefits or remittance advice of the other payer, not to exceed 210 calendar days from the date of service. It is the provider's responsibility to submit the claim to another primary payer within a sufficient timeframe to reasonably allow the primary payer to complete the processing of the claim and also meet the MAD timely filing limit. Denials by the primary payer due to the provider not meeting administrative requirements in filing the claim must be appealed by the provider to the primary payer. The MAD program only considers payment for a claim denied by the other primary payer when under the primary payer's plan the MAD recipient is not eligible, the diagnosis, service or item is not within the scope of the benefits, benefits are exhausted, pre-existing conditions are not covered, or out-of-pocket expenses or the deductibles have not been met. MAD will evaluate a claim for further payment including payment toward a deductible, co-insurance, co-payment or other patient responsibility. Claims for payment towards a deductible, co-insurance, co-payment or other patient responsibility must also be received within 90 calendar days of the date of the other payer's payment, not to exceed 210 calendar days from the date of service.

(4) For an eligible recipient for whom MAD benefits were not established at the time of service but retroactive eligibility has subsequently been established, claims must be received within 120 calendar days of the date the eligibility was added to the eligibility record of MAD or its selected claims processing contractor.

(5) For a provider of services not enrolled as a MAD provider at the time the services were rendered, including a provider that is in the process of purchasing an enrolled MAD provider entity such as a practice or facility, claims must be received within 90 calendar days of the date the provider is notified of the MAD approval of the provider participation agreement, not to exceed 210 calendar days from the date of service. It is the provider's responsibility to submit a provider participation agreement within a sufficient timeframe to allow completion of the provider enrollment process and submission of the claim within the MAD timely filing limit.

(6) For claims that were originally paid by a medicaid managed care organization from which the capitation payment is recouped resulting in recoupment of a provider's claim by the managed care organization, the claim must be received within 90 calendar days of the recoupment from the provider.

(7) For claims that were originally paid by MAD or its selected claims processing contractor and subsequently recouped by MAD or its selected claims processing contractor due to certain claims conflicts such as overlapping duplicate claims, a corrected claim subsequently submitted by the provider must be received within 90 calendar days of the recoupment.

B. The provider is responsible for submitting the claim timely, for tracking the status of the claim and determining the need to resubmit the claim.

(1) Filing limits are not waived by MAD due to the providers inadequate understanding of the filing limit requirements or insufficient staff to file the claim timely or failure to track pending claims, returns, denials, and payments in order to resubmit the claim or request an adjustment within the specified timely filing limitation.

(2) A provider must follow up on claims that have been transmitted electronically or on paper in sufficient time to resubmit a claim within the filing limit in the event that a claim is not received by MAD or its selected claims processing contractor. It is the provider's responsibility to re-file an apparently missing claim within the applicable filing limit.

(3) In the event the provider's claim or part of the claim is returned, denied, or paid at an incorrect amount the provider must resubmit the claim or an adjustment request within 90 calendar days of the date of the return, denial or payment of an incorrect amount, that was submitted in the initial timely filing period. This additional 90 calendar day period is a one-time grace period following the return, denial or mispayment for a claim that was filed in the initial timely filing period and is based on the remittance advice date or return notice. Additional 90 calendar day grace periods are not allowed. However, within the 90 calendar day grace period the provider may continue to resubmit the claim or adjustment requests until the 90 calendar day grace period has expired.

(4) Adjustments to claims for which the provider feels additional payment is due, or for which the provider desires to change information previously submitted on the claim, the claim or adjustment request with any necessary explanations must be received by MAD or its selected claims processing contractor with the provider using a MAD-approved adjustment format and supplying all necessary information to process the claim within the one-time 90 calendar day allowed grace period.

C. The eligible recipient or their personal representative is responsible for notifying the provider of MAD eligibility or pending eligibility and when retroactive MAD eligibility is received. When any provider including an enrolled provider, a non-enrolled provider, a managed care organization provider, and an out-of-network provider is informed of a recipient's MAD eligibility, the circumstances under which an eligible recipient or their personal representative can be billed by the provider are limited.

(1) When the provider is unwilling to accept the eligible recipient as a MAD fee-for-service (FFS) or managed care recipient, the provider must provide the eligible recipient or their personal representative written notification that they have the right to seek treatment with another provider that does accept a MAD fee-for-service or managed care eligible recipient. It is the provider's responsibility to have the eligible recipient or their personal representative receive and sign a statement that they are aware that the proposed service may be covered by MAD if rendered by an approved MAD or MAD managed care organization provider and that by authorizing a non-approved provider to render the service, that they agree to be held financially responsible for any payment to that provider. A provider may only bill or accept payment for services from an eligible recipient or their personal representative if all the following requirements are satisfied:

(a) The eligible recipient or their personal representative is advised by the provider before services are furnished that the particular provider does not accept patients whose medical services are paid for by MAD.

(b) The eligible recipient or their personal representative is advised by the provider regarding the necessity, options, and the estimated charges for the service, and of the option of going to a provider who accepts MAD payment.

(2) The eligible recipient is financially responsible for payment if a provider's claims are denied because of the eligible recipient's or their personal representative's failure to notify the provider of established eligibility or retroactive eligibility in a timely manner sufficient to allow the provider to meet the filing limit for the claim.

(3) When a provider is informed of MAD eligibility or pending MAD eligibility prior to rendering a service, the provider cannot bill the eligible recipient or their personal representative for the service even if the claim is denied by MAD or its selected claims processing contractor unless the denial is due to the recipient not being eligible for the MAD program or the service or item is not a benefit of the MAD program. In order to bill the eligible recipient for an item or service that is not a benefit of the program, prior to rendering the service or providing the item the provider must inform the eligible recipient or their personal representative that the service is not covered by the MAD program and obtain a signed statement from the eligible recipient or their personal representative acknowledging such notice. It is the provider's responsibility to understand or confirm the benefits of the MAD program and to inform the eligible recipient or their personal representative when the service is not a benefit of the program and to inform the eligible recipient or their personal representative.

(4) The provider must accept medicaid payment as payment in full and cannot bill a remaining balance to the eligible recipient or their personal representative other than a MAD allowed copayment, coinsurance or deductible.

(5) The provider cannot use a statement signed by the eligible recipient or their personal representative to accept responsibility for payment if the claim is denied as the basis to bill an eligible recipient or their personal representative unless such billing is allowed by MAD rules. It is the responsibility of the provider to meet the MAD program requirements for timely filing and other administrative requirements, to provide information to MAD or its selected claims processing contractor regarding payment issues on a claim, and to accept the decision of MAD

or its selected claims processing contractor for a claim. The eligible recipient or their personal representative does not become financially responsible when the provider has failed to meet the timely filing and other administrative requirements in filing a claim. The eligible recipient or their personal representative does not become financially responsible for payment for services or items solely because MAD or its selected claims processing contractor denies payment for a claim.

(6) The provider cannot bill the eligible recipient or their personal representative for charges that are denied for lack of medical necessity or not being an emergency unless the provider determined prior to rendering the service that medical necessity requirements or emergency requirements were not met and informed the eligible recipient that MAD will not pay for the services and the eligible recipient or their personal representative has signed a statement of the choice to proceed with the service or item.

(7) When a provider has been informed of MAD eligibility or pending MAD eligibility of a recipient, the provider cannot turn an account over to collections or to any other entity intending to collect from the eligible recipient or their personal representative. If a provider has turned an account over for collection, it is the provider's responsibility to retrieve that account from the collection agency and to accept the decision on payment of the claim by MAD or its selected claims processing contractor and to notify the eligible recipient.

D. The filing limit does not apply to overpayments or money being returned to MAD or its selected claims processing contractor.

(1) If a provider receives payment from another source, such as an indemnity insurance plan, HMO, or responsible third party, after receiving payment from MAD, an amount equal to the lower of either the insurance payment or the amount paid through the medicaid program must be remitted to MAD or its selected claims processing contractor third party liability unit, properly identifying the claim to which the refund applies.

(2) For claims for which an over-payment was made to the provider, the provider must return the overpayment to MAD or its selected claims processing contractor. The timely filing provisions for payments and adjustments to claims do not apply when the provider is attempting to return an overpayment.

E. MAD or its selected claims processing contractor may waive the filing limit requirement in the following situations:

(1) An error or delay on the part of MAD or its selected claims processing

contractor prevented the claim from being filed correctly within the filing limit period. In considering waiver of a filing limit for a claim for this situation, MAD or its selected claims processing contractor will consider the efforts made by the provider to initially file the claim in a timely manner and the follow up efforts made to secure payment in a timely manner from the other payer.

(2) The claim was filed within the filing limit period but the claim is being reprocessed or adjusted for issues not related to the filing limit.

(3) The claim could not be filed timely by the provider because another payer or responsible party could not or did not process the claim timely or provide other information necessary to file the claim timely. In considering a waiver of the filing limit for a claim for this situation, MAD or its selected claims processing contractor will consider the efforts made by the provider to initially file the claim and to follow up on the payment from another payer or responsible party in order to attempt to meet the MAD filing limit.

(4) A recipient for which MAD or medicare eligibility was established by hearing, appeal, or court order. In considering a waiver of the filing limit for a claim for this situation, MAD or its selected claims processing contractor will consider the efforts made by the provider to file the claim timely after the hearing or court decision.

(5) The claim is being reprocessed by MAD or its selected claims processing contractor for issues not related to the provider's submission of the claim. These circumstances may include when MAD is implementing retroactive price changes, or reprocessing the claim for accounting purposes.

(6) The claim was originally paid but recouped by another primary payer. In considering a waiver of the filing limit for a claim for this situation, MAD or its selected claims processing contractor will consider the efforts made by the provider to file the claim timely after the recoupment.

(7) The claim is from a federal Indian health services facility operating within the federal department of health and human services which is responsible for Native American health care or is a PL 93-638 tribally operated hospital and clinic which must be finalized within two years of the date of service.

(8) The claim is from a medicaid school-based service program when providing services to a MAD eligible recipient through an individualized education plan or an individualized family service plan to which an initial filing limit of 120 calendar days is applied.

F. The medicaid program is jointly funded through state and federal

sources. Claims will not be processed when the federal standards are not met, thereby precluding federal financial participation in payment of the claim.

G. A provider may not bill an eligible recipient or their personal representative for a service or item when a claim is denied due to provider error in filing the claim or failing to meet the timely filing requirements. It is the provider's responsibility to understand or verify the specific MAD program in which an eligible recipient is enrolled, the covered or non-covered status of a service or item, the need for prior authorization for a service or item, and to bill the claim correctly and supply required documentation. The eligible recipient or their personal representative cannot be billed by the provider when a claim is denied because these administrative requirements have not been met.

(1) The provider cannot bill the eligible recipient or their personal representative for a service or item in the event of a denial of the claim unless the denial is due to the recipient not being eligible for the MAD program; or if the service is not a benefit of the MAD program, prior to rendering the service the provider informed the eligible recipient or their personal representative that the specific service is not covered by the MAD program and obtained a signed statement from the eligible recipient or their personal representative acknowledging such.

(2) The provider cannot bill the eligible recipient or their personal representative for the service in the event that a payment is recouped by another primary payer and MAD or its selected claims processing contractor determines that the claim will not be reimbursed by MAD or its selected claims processing contractor.

(3) The provider cannot turn an account over to collections or to any other factor intending to collect from the eligible recipient or their personal representative. If a provider has turned an account over to a collection agency, it is the provider's responsibility to retrieve that account back from the collection agency and to accept the decision on payment of the claim by MAD or its selected claims processing contractor.

H. When documentation is required to show the provider met applicable filing limits, the date a claim is received by MAD or its selected claims processing contractor will be documented by the date on the claim control number (TCN) as assigned by MAD or its selected claims processing contractor. Documentation of timely filing when another third party payer, including medicare, is involved will be accepted as documented on explanation of benefits payment dates and reason codes from the third party. Documentation may be required to be submitted with the claim.

[2/1/95; 8.302.2.11 NMAC - Rn, 8 NMAC 4.MAD.702.2 & A, 5/1/04; A, 5/1/10; A, 10/15/10; A, 12/15/11]

8.302.2.12 BILLING FOR DUAL-ELIGIBLE MEDICAID RECIPIENTS:

To receive payment for services furnished to a MAD eligible recipient who is also entitled to medicare, a provider must first bill the appropriate medicare payer. The medicare payer pays the medicare covered portion of the bill. After medicare payment, MAD pays the amount the medicare payer determines is owed for copayments, co insurance and deductibles, subject to medicaid reimbursement limitations. When the medicare payment amount exceeds the amount that MAD would have allowed for the service, no further payment is made for the coinsurance, deductible, or copayment. The claim is considered paid in full. The provider may not collect any remaining portion of the medicare coinsurance, deductible, or copayment from the eligible recipient or their personal representative. For behavioral health professional services for which medicare part B applies to a [50 percent] "psych reduction" to the provider payment and increases the eligible recipient coinsurance rate, medicare coinsurance and deductible amounts are paid at an amount that allows the provider to receive 80 percent of the medicare allowed amount even if such amount exceeds the MAD allowed amount for the service. A provider must accept assignment on medicare claims for MAD eligible recipients. A provider who chooses not to participate in medicare or accept assignment on a medicare claim must inform the MAD eligible recipient or their personal representative that the provider is not a medicare provider or will not accept assignment; and that because of those provider choices, MAD cannot pay for the service. Additionally, the provider must inform the MAD eligible recipient or their personal representative of the estimated amount for which the eligible recipient will be responsible, that the service is available from other providers who will accept assignment on a medicare claim, and identify an alternative provider to whom the eligible recipient may seek services. The provider cannot bill a dually eligible MAD recipient for a service that medicare cannot pay because the provider chooses not to participate in medicare, or which MAD cannot pay because the provider chooses not to accept assignment on a claim, without the expressed consent of the MAD eligible recipient or their personal representative even when the medicare eligibility is established retro-actively and covers the date of service.

A. **Claim crossover:** If there is sufficient information for medicare to identify an individual as a MAD eligible

recipient, medicare may send payment information directly to the MAD claims processing contractor in a form known as a "cross-over claim". In all cases where claims fail to crossover automatically to MAD, a provider must bill the appropriate MAD claims processing contractor directly, supplying the medicare payment and medicare "explanation of benefits" (EOB) information and meet the MAD filing limit.

B. Medicare replacement plan or other health maintenance organization (HMO) plan: When a MAD eligible recipient belongs to a medicare replacement plan or HMO, MAD pays the amount the payer determines is owed for copayments, coinsurance or deductible, subject to medicaid reimbursement limitations. When the payer payment amount exceeds the amount that MAD would have allowed for the service, no further payment is made for the copayment, coinsurance or deductible. The claim is considered paid in full. The provider may not collect any remaining portion of the payer copayment, coinsurance or deductible from the eligible recipient or their personal representative. For behavioral health services for which medicare part B applies to a [50 percent] "psych reduction" to the provider payment and increases the eligible recipient coinsurance rate, medicare coinsurance and deductible amounts are paid at the amount that allows the provider to receive up to 80 percent of the payer amount allowed even if the amount exceeds the MAD allowed amount for the services.

C. All other HMO and medicare replacement plan requirements, including provider network restrictions must be met for medicaid to make payment on a claim.
[2/1/95; 8.302.2.12 NMAC - Rn, 8 NMAC 4.MAD.702.3 & A, 5/1/04; A, 5/1/10; A, 12/15/11]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.350.2 NMAC, Sections 1, 3, 5, 6 and 8-12, effective December 15, 2011. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.000 and 8 NMAC 4.MAD.953 to comply with NMAC requirements.

8.350.2.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[2/1/95; 8.350.2.1 NMAC - Rn, 8 NMAC 4.MAD.000.1 & A, 12/15/11]

8.350.2.2 SCOPE: The rule applies to the general public.
[2/1/95; 8.350.2.2 NMAC - Rn, 8 NMAC 4.MAD.000.2, 12/15/11]

8.350.2.3 STATUTORY AUTHORITY: [~~The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).~~] The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.

[2/1/95; 8.350.2.3 NMAC - Rn, 8 NMAC 4.MAD.000.3 & A, 12/15/11]

8.350.2.4 DURATION: Permanent
[2/1/95; 8.350.2.4 NMAC - Rn, 8 NMAC 4.MAD.000.4, 12/15/11]

8.350.2.5 EFFECTIVE DATE: November 1, 1996 unless a later date is cited at the end of a section.
[11/1/96; 8.350.2.5 NMAC - Rn, 8 NMAC 4.MAD.000.5 & A, 12/15/11]

8.350.2.6 OBJECTIVE: [~~The objective of these regulations is to provide policies for the service portion of the New Mexico medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.~~] The objective of this rule is to provide instructions for the service portion of the New Mexico medicaid programs.
[2/1/95; 8.350.2.6 NMAC - Rn, 8 NMAC 4.MAD.000.6 & A, 12/15/11]

8.350.2.7 DEFINITIONS: [RESERVED]

8.350.2.8 MISSION STATEMENT: [~~The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.~~] To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[2/1/95; 8.350.2.8 NMAC - Rn, 8 NMAC 4.MAD.002 & A, 12/15/11]

8.350.2.9 [RECONSIDERATION OF] UTILIZATION REVIEW DECISIONS: [~~Providers who are dissatisfied with a medical necessity decision made or~~

~~utilization review action taken by the New Mexico medical assistance division (MAD); MAD utilization review contractor (UR contractor), or MAD designee can request a re-review and reconsideration. This part describes the re-review and reconsideration process for utilization review decisions.]~~

A. Utilization review decisions are those decisions the medical assistance division (MAD), the MAD utilization review (UR) contractor or a MAD designee makes regarding the medical necessity of services or items that require authorization for medical necessity or a level of care (LOC) determination prior to reimbursement by MAD and its fee-for-service program. For applicable rules for services and items provided through a MAD managed care organization (MCO), refer to 8.305.12 NMAC, MCO Member Grievance System, 8.306.12 NMAC, Member Grievance Resolution, and 8.307.12 NMAC, Member Grievance Resolution. For applicable rules for services and items provided through coordinated service contractors, refer to 8.349.2 NMAC, Appeals and Grievance Process.

B. For services for which payment has already been made for which MAD is recouping payment due to a post payment review of medical necessity or LOC, the applicable rule is 8.353.2 NMAC, Provider Hearings.

C. Decisions are based on information submitted by the provider in a format specified by MAD, the MAD coordinated services contractor (MAD UR contractor), or a MAD designee, and applicable state rules.

D. Prior to making a decision, the MAD UR contractor, or a MAD designee may issue a request for information (RFI) to the provider requesting clarification or additional information in order to have sufficient information to render an appropriate decision. The provider must submit the clarification or additional information within 21 calendar days of issuance of the request or a technical denial may be issued.

E. MAD or its designee may reduce the authorized services or items including frequency, intensity, duration, quantity, scope or level of care after considering the submitted documentation or MAD rules. An eligible provider or eligible recipient who is dissatisfied with the decision may proceed according to the rules for reconsideration in 8.350.2.10 NMAC, reconsideration of utilization review decisions.
[11/1/96; 8.350.2.9 NMAC - Rn, 8 NMAC 4.MAD.953 & A, 12/15/11]

~~**8.350.2.10 RE-REVIEW:** Providers who disagree with review decisions must request a re-review of decisions before~~

requesting a reconsideration:

A. ~~Re-review time limits:~~
~~The re-review must be requested within ten (10) calendar days after the date on the written notification of the utilization review decision or action. Requests for re-review must be submitted in writing directly to the UR contractor or review agency which performed the original review. The request for a re-review of denial for a prior authorization given by the UR contractor or review agency by phone must be requested within two (2) working days of the date of the denial.~~

B. ~~Re-review process:~~
~~The UR contractor or review agency has fifteen (15) calendar days from receipt of a written request for a re-review to complete and submit a written re-review decision to the provider. For telephone reviews, the UR contractor has four (4) working days from receipt of a request for re-review to complete and submit the re-review decision to the provider. The notice of the decision contains information on the reconsideration process and time frames for submission of requests for reconsideration.]~~

~~[8.350.2.11]~~ **8.350.2.10**
RECONSIDERATION OF
UTILIZATION REVIEW DECISIONS:

~~[Providers who disagree with a re-review determination may request a reconsideration.]~~
A provider who is dissatisfied with a medical necessity or LOC decision by MAD, the UR contractor or a MAD designee, can request reconsideration. An eligible recipient who is dissatisfied with a medical necessity or LOC decision by MAD, the UR contractor or a MAD designee, can request the provider to pursue reconsideration on his or her behalf.

A. ~~Time constraints and submission requirements:~~ Requests for reconsideration must be in writing and received by the UR contractor or [review agency] a MAD designee within [thirty (30)] 30 calendar days after the date on the [re-review] initial determination decision notice.

B. ~~Untimely filing of request for reconsideration:~~ Requirement for filing an extension: The UR contractor or [review agency] a MAD designee will accept a request for reconsideration filed [after the thirty (30) calendar day receipt of notice of the re-review decision] up to 14 calendar days past the 30 calendar day limit if MAD finds that there was good cause for the provider's or the eligible recipient's failure to file [in] a timely request. The provider or the eligible recipient must furnish MAD with written documentation of good cause. Good cause includes serious illness that prevented the provider or the eligible recipient from filing the request, death or serious illness in the provider's or the eligible recipient's immediate family, destruction of important records, or other unusual or unavoidable

circumstances.

C. ~~Information required in the request for reconsideration:~~ The request for reconsideration must include the following:

- (1) reference to the challenged decision or action;
- (2) basis for the challenge;
- (3) copies of any document(s) pertinent to the challenged decision or action;
- (4) copies of claim form(s) if the challenge involves a claim for payment which is denied due to a utilization review decision; and
- (5) statement that a reconsideration of the [re-review] decision is requested.

D. ~~Individuals conducting reconsideration review:~~ [Individuals employed by the UR contractor or review agency who were not participants in the initial utilization review decision or the re-review determination conduct the reconsideration review.] Individuals employed by MAD, the UR contractor or a MAD designee who were not participants in the initial utilization review decision conduct the reconsideration review.

E. ~~Information used in reconsideration process:~~ The UR contractor or [review agency] a MAD designee reviews the information and findings upon which the initial determination decision [and re-review determination] was based and any additional information submitted to, or otherwise obtained by, the UR contractor or [review agency] a MAD designee. The information can include the following:

- (1) ~~[case records and other applicable documents submitted to the UR contractor or review agency when the provider initially proposed to furnish services]~~ case records and other applicable documents submitted to the UR contractor or a MAD designee by the provider when the request for services was initially submitted;
- (2) findings of the reviewer resulting in the initial decision;
- (3) complete record of the service(s) provided, including hospital or medical records; and
- (4) ~~[additional documents submitted by the provider in his/her request for reconsideration review]~~ additional documents submitted by the provider to support a reconsideration review.

F. ~~Decision deadline:~~ The UR contractor or [review agency] a MAD designee performs the reconsideration and furnishes the reconsideration decision within [thirty (30)] 10 business days of receipt of the reconsideration request.

G. ~~Notification of reconsideration decision:~~ The UR contractor or [review agency] a MAD designee gives the provider and the eligible recipient written notice of the reconsideration

determination. If the decision is adverse to the [provider] eligible recipient, the notice also includes a statement advising [a provider] an eligible recipient that he/she can request an administrative hearing. [11/1/96; 8.350.2.10 NMAC - Rn, 8 NMAC 4.MAD.953.1 & Repealed, 12/15/11; 8.350.2.10 NMAC - Rn & A, 8.350.2.11 NMAC, 12/15/11]

~~[8.350.2.12] **P R O V I D E R HEARINGS:**~~ Providers who disagree with the reconsideration determination made by the UR contractor or review agency can request an administrative hearing. Providers can submit written requests for a hearing to the MAD office or the human services department hearing bureau. Requests for a hearing must be received within thirty (30) calendar days of the final UR reconsideration decision or within the time frame indicated on the notice of action. See Section MAD-980, Provider Hearings.]

8.350.2.11 R E C I P I E N T HEARINGS:

When a reconsideration results in the termination, modification, suspension, reduction or denial of the services or LOC requested for the eligible recipient, the right to be notified and the right to an administrative hearing falls to the eligible recipient, who may request an administrative hearing. The eligible recipient can submit a written request for an administrative hearing to the MAD office or HSD fair hearings bureau. With the permission of the eligible recipient, the provider may assist the eligible recipient or act on behalf of the eligible recipient in the administrative hearing process. A request for an administrative hearing must be received within 30 calendar days of the final UR reconsideration decision or within the time frame indicated on the notice of action. See 8.352.2 NMAC, Recipient Hearings.

A. ~~Record preservation:~~
 To preserve a record for review, MAD, the UR contractor or [review agency] a MAD designee documents and retains a record of the [re-review and the reconsideration determinations] reconsideration determination.

B. ~~Documentation requirements:~~ The record preserved by MAD, the UR contractor or [review agency] a MAD designee includes all documentation of the initial utilization review decision, copies of any documents relevant to the initial decision, any additional evidence presented during the [re-review and reconsideration and copies of the re-review and reconsideration determinations] reconsideration, and a copy of the reconsideration determination. [11/1/96; 8.350.2.11 NMAC - Rn, 8 NMAC 4.MAD.953.2 & Repealed, 12/15/11; 8.350.2.11 NMAC - Rn & A, 8.350.2.12 NMAC, 12/15/11]

NEW MEXICO LIVESTOCK BOARD

This is an amendment to 21.32.4 NMAC, Section 10, effective 12/15/11.

21.32.4.10 TUBERCULOSIS TEST REQUIREMENTS FOR CATTLE AND BISON:

[A.] All sexually intact import dairy cattle 4 months of age or older [and beef breeding bulls 12 months of age and older] **must** have a negative tuberculin test within 30 days prior to entry **regardless** of the status of the state of origin or TB free herd.

[B.] ~~All cattle imported to New Mexico having originated in Michigan, regardless of age, must have a negative tuberculosis test within 30 days prior to entry. All cattle originating in Michigan must have a health certificate, with individual animal identification, issued within 15 days of movement and must have a prior entry permit issued by the New Mexico livestock board. All cattle originating in Michigan must be quarantined upon arrival in New Mexico and will not be released until a negative tuberculosis test is completed 60 to 90 days post entry.]~~

[3/1/99, 2/29/2000; 21.32.4.10 NMAC - Rn & A, 21 NMAC 32.4.10, 12/31/2007; A, 12/15/2011]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 19 PUBLIC SCHOOL ACCOUNTABILITY PART 8 GRADING OF PUBLIC SCHOOLS

6.19.8.1 ISSUING AGENCY: Public Education Department
[6.19.8.1 NMAC - N, 12-15-11]

6.19.8.2 SCOPE: This rule shall apply to all public schools in New Mexico.
[6.19.8.2 NMAC - N, 12-15-11]

6.19.8.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and 22-2E-1 to 22-2E-4, being the A-B-C-D-F Schools Rating Act.
[6.19.8.3 NMAC - N, 12-15-11]

6.19.8.4 DURATION: Permanent.
[6.19.8.4 NMAC - N, 12-15-11]

6.19.8.5 EFFECTIVE DATE: December 15, 2011, unless a later date is

cited at the end of a section.

[6.19.8.5 NMAC - N, 12-15-11]

6.19.8.6 OBJECTIVE: The purpose of this rule is to implement the A-B-C-D-F Schools Rating Act and to establish a rating system for grading public schools in a way that the ratings are meaningful to parents, school personnel and the interested community. Additionally, this rule establishes criteria for rating public schools and provides options for students in a failing school.

[6.19.8.6 NMAC - N, 12-15-11]

6.19.8.7 DEFINITIONS:

A. "ACT" means American college testing and is a standardized test offered by ACT, inc. for high school achievement and college admissions in the United States.

B. "AP" means advanced placement which is a curriculum based program sponsored by the college board that offers standardized courses to high school students that are generally recognized to be equivalent to undergraduate courses in college and for which participating colleges may grant college credit to students who obtained high enough scores on the exams to qualify.

C. "Career readiness" means organized programs offering a sequence of courses, including technical education and applied technology education, which are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring an industry-recognized credential, certificate or degree which can be applied towards their graduation from high school. To be considered successfully career ready, students must also graduate with a New Mexico diploma of excellence.

D. "Cohort graduation rate" means the percentage of students who graduate high school in four years with a New Mexico diploma of excellence. The four-year cohort consists of all first-time ninth graders in the first year, joined by incoming tenth graders in the second year, eleventh graders in the third year, and twelfth graders in the fourth year. The members of the five-year cohort shall be followed by the PED for one additional year to form the five-year cohort graduation rate, and two additional years to form the six-year graduation rate. Students are excused from cohort membership if they transfer out, emigrate to another country, or die during that same period.

E. "College readiness" means the readiness of New Mexico high school students for success in higher education based on their dual credit, ACT, PSAT, or AP test scores.

F. "Department" means the

New Mexico public education department and is identified by the acronym, "PED".

G. "Dual credit" means a program that allows high school students to enroll in college-level courses offered by a postsecondary institution that may be academic or career technical but not remedial or developmental, and simultaneously to earn credit toward high school graduation and a postsecondary degree or certificate.

H. "Opportunity to learn survey" means a brief survey that asks students about their teacher's predominant instructional practices in the classroom.

I. "Performance level" means a level of performance as indicated by scale scores on the New Mexico standards-based assessment.

J. "Proficiency in reading and mathematics" means a student's score of proficient or advanced on the New Mexico standards-based assessments.

K. "PSAT" or "PSAT/NMSQT" means the preliminary SAT/national merit scholarship qualifying test which is a standardized test offered by the college board for both preliminary and primary selection to determine a student's eligibility and qualification for the national merit scholarship program.

L. "RtI programs" means a multi-tiered intervention model that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a framework for making educational programming and eligibility decisions. The model includes primary, secondary and tertiary levels of intervention based on progress monitoring to determine the student's response or lack of response to the instruction/intervention.

M. "SAT" means a standardized test offered by the college board for college admissions in the United States.

N. "School growth" means growth of a school performance over a three year period, as calculated by value added modeling (VAM).

O. "School options" means a right to transfer to any public school not rated an F in the state or have children continue their schooling through distance learning offered through the statewide or a local cyber academy;

P. "Secretary" means the secretary of public education of the PED.

Q. "Standards-based assessments" means the collection of instruments that assess student academic performance and the students' progress toward meeting the New Mexico content standards with benchmarks and performance standards, and are administered annually in grades three, four, five, six, seven, eight, ten and eleven.

R. "Status" means a single

year measurement of a school.

S. "Student growth" means learning a year's worth of knowledge in one year's time, which is demonstrated by a student's performance on New Mexico standards-based assessments that shows the student:

- (1) moving from one performance level to a higher performance level; or
- (2) maintaining a proficient or advanced proficient performance level; or
- (3) remaining in beginning step or nearing proficient performance level but improving a number of scale score points.

T. "VAM or "value added model" means estimating conditional school growth and conditional status, where "conditional" refers to taking student background characteristics into account. [6.19.8.7 NMAC - N, 12-15-11]

6.19.8.8 REQUIREMENTS:

A. The department shall grade all public schools annually by assigning a letter grade of either A, B, C, D or F to each school. Assessment results of all students, including students with a disability and students who are English language learners, shall be considered in assigning schools a letter grade.

B. Elementary and middle schools shall be graded based on:

- (1) student performance, including achievement on the New Mexico standards-based assessments;
- (2) student growth in achievement based on the New Mexico standards-based assessment;
- (3) student growth of the lowest twenty-fifth percentile of students in the public school based on the New Mexico standards-based assessments;
- (4) school growth based on the New Mexico standards-based assessments;
- (5) school attendance; and
- (6) the results of an opportunity to learn survey.

C. High schools shall be graded based on:

- (1) student performance, including achievement on the New Mexico standards-based assessments;
- (2) student growth in achievement based on the New Mexico standards-based assessments;
- (3) student growth of the lowest twenty-fifth percentile of students in the public school based on the New Mexico standards-based assessments;
- (4) school growth based on the New Mexico standards-based assessments;
- (5) 4-year and 5-year cohort graduation rate, and beginning with the 2012-2013 school year, a 6-year cohort graduation rate;
- (6) school growth in the 4-year cohort graduation rate;

(7) college readiness (i.e., ACT, PSAT, dual credit, SAT or AP scores) or career readiness (i.e., pre-apprenticeship programs, and cooperative education programs);

(8) school attendance; and

(9) the results of an opportunity to learn survey.

D. The department shall annually publish disaggregated school grading data on its website.

E. The parent of a student enrolled in a public school rated F for two of the last four school years shall have a right to either:

(1) transfer the student in the same grade to any public school in the state not rated F; or

(2) continue their schooling by means of distance learning through the statewide cyber academy or distance learning offered by any New Mexico school district or charter school, provided that the entire cost of distance learning shall be paid by the school that was rated F and in which student is still enrolled.

F. The transfer of any student pursuant to the A-B-C-D-F Schools Rating Act shall be conducted pursuant to the open enrollment provisions of Section 22-1-4 NMSA 1978, provided that no school district or charter school shall adopt enrollment policies that exclude the enrollment of a student from a school rated F for two of the last four school years, and provided further that students seeking to enroll in a charter school must participate in that school's lottery unless the school has not exceeded its enrollment limit and in any event the enrollment procedures set forth in Section 22-8B-4.1 NMSA 1978 shall apply. A school district shall not be responsible for the transportation cost or transportation of a student who transfers to a charter school or to a school in another New Mexico school district. A school district shall, however, be responsible for the transportation and transportation cost of a student who transfers to another school within the school same district even where that school is outside of the student's attendance zone.

G. The options available pursuant to Subsection E of Section 6.19.8.8 NMAC, which shall be available to students with a disability and students who are English language learners, shall be in addition to any remedies provided for in the Assessment and Accountability Act (Chapter 22, Article 2C NMSA 1978) for students in schools in need of improvement or any other interventions prescribed by the federal No Child Left Behind Act of 2001.

[6.19.8.8 NMAC - N, 12-15-11]

6.19.8.9 DETERMINATION OF A SCHOOL'S GRADE:

A. For elementary and

middle schools, the indicators shall be weighted by assigning up to a maximum of 100 points as follows:

(1) 40 points for student performance, including achievement on the New Mexico standards-based assessments of which 25 points shall be based on status proficiency and 15 points shall be based on VAM;

(2) 20 points for student growth based on the New Mexico standards-based assessments;

(3) 20 points for student growth of the lowest twenty-fifth percentile of students in the public school based on the New Mexico standards-based assessments;

(4) 10 points for school growth based on the New Mexico standards-based assessments;

(5) 5 points for school attendance;

(6) 5 points for results of an opportunity to learn survey; and

(7) in addition to the 100 points described above, an elementary or middle school may be assigned a total of five percent bonus points for either demonstrated parental involvement or demonstrated student participation in extracurricular activities, where:

(a) parental involvement shall include but not be limited to innovative school programs involving parental input, detailed parental surveys on key educational initiatives, successful school and parent partnerships, increasing parental volunteerism, parental membership on audit committees pursuant to 22-8-12.3 NMSA 1978, and improvement of communication, all of which shall be verifiable;

(b) extracurricular activities shall include any single or combination of student participatory activities that include but are not limited to campus based academic and fine arts activities, campus based leadership activities, or any of the activities governed by the New Mexico activities association, all of which shall be verifiable.

B. For elementary and middle schools after totaling the points of each indicator, the following grade shall be assigned:

(1) a grade of A indicates a score of 75.0 points or higher;

(2) a grade of B indicates a score of 60.0 to less than 75.0 points;

(3) a grade of C indicates a score of 50.0 to less than 60.0 points;

(4) a grade of D indicates a score of 37.5 to less than 50.0 points; and

(5) a grade of F indicates a score of less than 37.5 points.

C. For high schools, the indicators shall be weighted by assigning up to a maximum of 100 points as follows:

(1) 30 points for student performance, including achievement on the New Mexico standards-based assessments

of which 20 points shall be based on status proficiency and 10 points shall be based on VAM;

(2) 10 points for student growth based on the New Mexico standards-based assessment;

(3) 10 points for student growth of the lowest twenty-fifth percentile of students in the high school based on the New Mexico standards-based assessment;

(4) 10 points for school growth based on the New Mexico standards-based assessment;

(5) 8 points for the 4-year cohort graduation rate;

(6) 5 points for school growth in the 4-year cohort graduation rate;

(7) 4 points for the 5-year and 6-year graduation rates;

(8) 5 points for student participation in college or career readiness;

(9) 10 points for student success in college or career readiness;

(10) 3 points for school attendance;

(11) 5 points for the results of an opportunity to learn survey; and

(12) In addition to the 100 points described above, a high school may be assigned a total of 5 bonus points for either demonstrated parental involvement or demonstrated student participation in extracurricular activities where:

(a) parental involvement shall include but not be limited to verifiable innovative school programs involving parental input, detailed parental surveys on key educational initiatives, successful school and parent partnerships, increasing parental volunteerism, parental membership on audit committees pursuant to 22-8-12.3 NMSA 1978, and improvement of communication, all of which shall be verifiable;

(b) extracurricular activities shall include any single or combination of verifiable student participatory activities that include but are not limited to campus based academic and fine arts activities, campus based leadership activities, or any of the activities governed by the New Mexico activities association.

D. For high schools after totaling the percentage scores and corresponding points of each indicator, the following grade shall be assigned:

(1) a grade of A indicates a score of 75.0 points or higher;

(2) a grade of B indicates a score of 65.0 to less than 75.0 points;

(3) a grade of C indicates a score of 50.0 to less than 65.0 points;

(4) a grade of D indicates a score of 35.0 to less than 50.0 points; and

(5) a grade of F indicates a score of less than 35.0 points.

E. Despite the grading of public schools as established by this rule, any school that meets adequate yearly progress

pursuant to the federal No Child Left Behind Act of 2001 during the 2011-2012 school year shall not be assigned a grade lower than a C. This consideration shall not be available in subsequent school years.

[6.19.8.9 NMAC - N, 12-15-11]

[The department maintains a school grading technical guide on its website, which can be accessed at <http://ped.state.nm.us/> and provides a description of the variables and formula used to determine school grading.]

6.19.8.10 PRIORITIZATION OF SCHOOL RESOURCES:

A. As part of the annual budget approval process pursuant to Section 22-8-11 NMSA 1978, on or before July 1 of each year, the department shall ensure that a local school board or governing body of a charter school is prioritizing resources of a public school rated D or F toward proven programs and methods linked to improved student achievement until the public school earns a grade of C or better for two consecutive school years.

B. To determine the prioritization of resources of a public school rated D or F, the department shall examine any combination of:

(1) a school's core curricula in reading and mathematics;

(2) a school's intervention curricula in reading and mathematics;

(3) a school's current professional development activities for licensed staff including any efforts or plans to align that professional development to the school's deficiencies in reading and mathematics;

(4) a school's educational plan for student success;

(5) the licensure and documented skill set of the school's teachers and administrators;

(6) any short cycle assessments administered by the school in reading or mathematics;

(7) any learning software used by the school to teach reading or mathematics;

(8) any district or PED data related to student proficiency in reading or mathematics, high school graduation rates, advanced placement courses, growth in high school graduation rates, and ACT, PSAT or AP scores; and

(9) specific expenditures by the school related to teaching and assessing student proficiency in reading or mathematics; RtI programs; alignment of curriculum, instruction and professional development to common core; alignment to cultural based education principles; and parental involvement.

C. The department shall recommend additional proven programs and methods to local school boards and charter school governing bodies that are linked to improved student achievement.

Each local school board and charter school governing body shall carefully consider the implementation of one or more recommended program or method until their failing school earns a grade of C or better for two consecutive school years. If after two consecutive school years a school continues to earn a grade of F, the local school board and charter school governing body shall implement new proven programs or methods that will result in increased student achievement.

D. A local school board or charter school governing body choosing not to implement PED recommended proven programs or methods must demonstrate with student achievement data and in writing to the department that they have already identified and implemented a proven program or method linked to improved student achievement in reading and mathematics.

[6.19.8.10 NMAC - N, 12-15-11]

6.19.8.11 SMALL SCHOOL AND NON-ASSESSMENT CONSIDERATIONS:

A. A small school is a school with an enrollment of fewer than 25 students. To calculate the school grade of a small school, the department shall where possible apply an alternate proficiency calculation that accumulates student performance based on one or two immediately preceding years until a minimum group size is met. Once the minimum group size is met, the assessment data shall be used in grading that school.

B. Schools such as kindergarten through grade two schools or ninth grade that are comprised of grades that are not included in the administration of standards-based assessments, shall be assigned the assessment data using a reconstituted student group of alumnae from that school in their first tested grade. If no alumnae exist, the school's feeder pattern will be used to assign a grade from the receiving school. If no feeder pattern exists, the school will be assigned the grade from the parent district.

[6.19.8.11 NMAC - N, 12-15-11]

HISTORY OF 6.19.8 NMAC: [Reserved]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.15.2 NMAC, GRRDS, General Administrative Records, amending Sections 3, 6, 7, 8 and 9 and adding Section 801 effective 12/19/2011.

1.15.2.3 STATUTORY

AUTHORITY: [The administrator shall establish a records management program and shall establish records disposal schedules for the orderly retirement of records and adopt regulations necessary for the carrying out of the public records act. Records disposal schedules shall not become effective until thirty days after the filing date. Section 14-3-6 NMSA 1978.] Section 14-3-4 NMSA 1978. It shall be the duty of the commission to adopt and publish rules to carry out the purposes of the Public Records Act. Section 14-3-6 NMSA 1978. The administrator shall establish a records management program for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records. [8/8/96; 1.15.2.3 NMAC - Rn, 1 NMAC 3.2.90.3, 10/01/2000; A, 1/6/2002; A, 12/19/2011]

1.15.2.6 OBJECTIVE:

[To establish records disposal schedules for the orderly retirement of records, Section 14-3-6 NMSA 1978.] To establish a records retention schedule for the orderly management, retention, disposition and preservation of records necessary for carrying out the Public Records Act pursuant to Section 14-3-6 NMSA 1978. [8/8/96; 1.15.2.6 NMAC - Rn, 1 NMAC 3.2.90.6, 10/01/2000; A, 1/6/2002; A, 12/19/2011]

1.15.2.7 DEFINITIONS:

A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978):

B. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2, NMSA 1978):

C. "Audit" means a periodic examination of an organization to determine whether appropriate procedures and practices are followed:

D. "Commission" means the state commission of public records (Section 14-3-2 NMSA 1978):

E. "Pending litigation" means a proceeding in a court of law whose

activity is in progress but not yet completed:

F. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition:

G. "Records retention period" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes:

H. "Records retention schedule" means a document prepared as part of a records retention program that lists the period of time for retaining records:

I. "Website" means a presence on the internet or intranet containing information that represents an agency or presents information on specific subjects or allows transactions to be conducted through the use of links or webpages. A website is normally hosted and maintained by an agency or by another entity sharing internet resources or through an internet service provider.]

A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978):

B. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978):

C. "Archives" means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico. The term also refers to the organizational unit of the SRCA storing these records.

D. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction):

E. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission.

F. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither

made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts; blank forms, transmittal letters or forms that do not add information; sample letters; and reading file or informational files.

G. "Public record" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-4-2 NMSA 1978):

H. "Records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee.

I. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

J. "Records retention and disposition schedule" means rules adopted by the commission pursuant to Section 14-3-4 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

K. "Retention" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

[8/8/96; 5/19/97; 1.15.2.7 NMAC - Rn, 1 NMAC 3.2.90.7, 10/01/2000; A, 1/6/2002; A, 1/5/2004; A, 12/19/2011]

1.15.2.8 ABBREVIATIONS AND ACRONYMS:

A. "SRC" stands for state records center

B. "USC" stands for United States code]

A. "CFR" stands for code of federal regulations.

B. "EDRRDS" stands for education records retention and disposition schedules.

C. "ERRDS" stands for executive records retention and disposition schedules.

D. "GRRDS" stands for general records retention and disposition schedules.

E. "JRRDS" stands for judicial records retention and disposition

schedules.

F. **“LRRDS”** stands for legislative records retention and disposition schedules.

G. **“LGRRDS”** stands for local government records retention and disposition schedules.

H. **“SRCA”** stands for state records center and archives.

I. **“USC”** stands for United States code.

[8/8/96; 5/19/97; 1.15.2.8 NMAC - Rn, 1 NMAC 3.2.90.8, 10/01/2000; N, 1/6/2002; A, 12/19/2011]

1.15.2.9 INSTRUCTIONS:

A. For records of an administrative nature, refer to the Records Retention and Disposition Schedule for General Administrative Records, 1.15.2 NMAC.

B. For records of a financial nature, refer to the Records Retention and Disposition Schedule for General Financial Records, 1.15.4 NMAC.

C. For records of a personnel nature, refer to the Records Retention and Disposition Schedule for General Personnel Records 1.15.6 NMAC.

D. For records of a medical nature, refer to the Records Retention and Disposition Schedule for General Medical Records, 1.15.8 NMAC.

E. Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

F. The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

G. Confidentiality is denoted for files likely to contain confidential materials, but files without a confidentiality note nonetheless may contain confidential or privileged materials and failure to include an express confidentiality note in the description of a file does not waive the confidential or privileged nature of those materials. Refer questions concerning the confidentiality of a file or portions of a file to legal counsel for the agency.

H. Access to confidential documents or confidential files shall be only by authorization of agency or attorney general or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

I. All records, papers or documents may be photographed;

microfilmed, microphotographed or reproduced on film. Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies (Section 14-1-5, 14-1-6 NMSA 1978).

J. Electronic records. Many paper records are being eliminated when the information has been placed on magnetic tapes, disks, or other data processing media. In these cases, the information on the data processing medium should be retained for the length of time specified in records retention and disposition schedules for paper records and should be subject to the same confidentiality and access restrictions as paper records. When the destruction of a record is required, all versions of said record shall be electronically over-written on machine readable media on which it is stored (or media destroyed). (See also 1.13.70 NMAC: Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems).

K. An agency should not place an original or official copy of record on an agency's website. An original or official copy of record is a public record, regardless of media, as defined by 14-2-6 NMSA 1978. A public record must be maintained for a specified amount of time and must go through the disposition process as stated in the general or agency's records retention and disposition schedule. An agency should develop a plan for the management of the public records maintained on their website and integrate the plan into the agency's overall records management program. For further guidance see the New Mexico chief information officer's website for standards and guidelines for the creation and maintenance of a website.]

A. Records retention and disposition schedules identify the types of records maintained by state agencies and specify a period of time which records must be retained. A retention period may be stated in terms of months or years and is sometimes expressed as contingent upon the occurrence of an event. There are several types of records retention and disposition schedules created by the SRCA for state agencies. General schedules list records common to all agencies and executive schedules list records specific to an agency. Each record series will be represented in the format listed below.

(1) Program - describes the function of the records

(2) Maintenance system - describes how an agency files (organizes) records

(3) Description - describes the purpose and content of a record

(4) Retention - defines the length

of time records must be kept before they are eligible for destruction or archival preservation.

B. For records of a general administrative nature, refer to the GRRDS, General Administrative, 1.15.2 NMAC.

C. For records of a financial nature, refer to the GRRDS, General Financial, 1.15.4 NMAC.

D. For records of a personnel nature, refer to the GRRDS, General Personnel, 1.15.6 NMAC.

E. For records of a medical nature, refer to the GRRDS, General Medical, 1.15.8 NMAC.

F. Retention periods shall be extended until six months after all current or pending litigation; current claims, audit exceptions or court orders involving a record have been resolved or concluded.

G. The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are included in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

H. Confidentiality is denoted for files likely to contain confidential materials or information; however files without a confidentiality note may contain confidential or privileged information. Failure to include a confidentiality note in the description of a record series does not waive confidentiality. Refer questions concerning the confidentiality of a file to legal counsel for the agency.

I. Access to confidential documents, information or files shall be only by authorization of the agency records custodian (Section 14-2-8 NMSA 1978), or by the office of the attorney general or by court order, unless otherwise provided by law. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

J. Records may be photographed, microfilmed, digitized or converted to computer output microfilm provided a microphotography plan has been approved by the state records administrator (Section 14-3-17 NMSA 1978). Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction as evidence in all courts or administrative agencies (Section 14-1-6 NMSA 1978).

K. Public records placed on magnetic tapes, disks or other data processing media shall be retained for the length of time specified in records retention and disposition schedules and are subject to the same confidentiality and access restrictions as paper records. See also 1.13.70 NMAC, Performance Guidelines for the Legal

Acceptance of Public Records Produced by Information Technology Systems.

L. Email is a transmission medium for content that may or may not be a public record. Email messages that contain information sent or received by an agency in connection with the transaction of official state business or in pursuance of law are public records and are subject to retention requirements established in records retention and disposition schedules. Email messages are required to be categorized, filed and retained on the basis of content (1.13.4 NMAC, Records Management Requirements for Electronic Messaging). The content of email messages may vary considerably; therefore, each email shall be evaluated to determine if it meets the definition of a public record as defined in the Public Records Act. Non-records or transitory emails that do not provide evidence of official agency policies or business transactions may be deleted. [1.15.2.9 NMAC - Rn, 1 NMAC 3.2.90.8 & A, 1/6/2002; A, 1/5/2004; A, 12/19/2011]

1.15.2.801 INFORMATION TECHNOLOGY SERVICE REQUESTS:

A. Program: information technology

B. Maintenance system: chronological by date

C. Description: records documenting requests for technical service assistance. Files may include service request form, response to request, information on the use of computer equipment for program delivery, security authorization form, etc.

D. Retention: three years after date request completed

[1.15.2.801 NMAC - N, 12/19/2011]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.15.3 NMAC, GRRDS, General Administrative Records (for use by local government and educational institutions), amending Sections 3, 6, 7, 8 and 9 and adding Section 801 effective 12/19/2011.

1.15.3.3 STATUTORY AUTHORITY: [The administrator shall establish a records management program and shall establish records disposal schedules for the orderly retirement of records and adopt regulations necessary for the carrying out of the public records act. Records disposal schedules shall not become effective until thirty days after the filing date, Section 14-3-6 NMSA 1978.] Section 14-3-4 NMSA 1978. It shall be the duty of the commission to adopt and publish rules to carry out the purposes of the Public Records Act. Section

14-3-6 NMSA 1978. The administrator shall establish a records management program for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records. [8/8/96; 1.15.3.3 NMAC - Rn, 1 NMAC 3.2.90.3, 10/01/2000; A, 1/6/2002; A, 12/19/2011]

1.15.3.6 OBJECTIVE: [To establish records disposal schedules for the orderly retirement of records, Section 14-3-6 NMSA 1978.] To establish a records retention schedule for the orderly management, retention, disposition and preservation of records necessary for carrying out the Public Records Act pursuant to Section 14-3-6 NMSA 1978.

[8/8/96; 1.15.3.6 NMAC - Rn, 1 NMAC 3.2.90.6, 10/01/2000; A, 1/6/2002; A, 12/19/2011]

1.15.3.7 DEFINITIONS:

A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

B. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2, NMSA 1978).

C. "Audit" means a periodic examination of an organization to determine whether appropriate procedures and practices are followed.

D. "Commission" means the state commission of public records (Section 14-3-2 NMSA 1978).

E. "Pending litigation" means a proceeding in a court of law whose activity is in progress but not yet completed.

F. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

G. "Records retention period" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

H. "Records retention schedule" means a document prepared as part of a records retention program that lists the period of time for retaining records.

I. "Website" means a presence on the internet or intranet containing information that represents an agency or presents information on specific subjects or allows transactions to be conducted through the use of links or webpages. A website is normally hosted and maintained by an agency or by another entity sharing internet

resources or through an internet service provider.]

A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

B. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978).

C. "Archives" means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico or its political subdivisions.

D. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

E. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission.

F. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts; blank forms, transmittal letters or forms that do not add information; sample letters; and reading file or informational files.

G. "Public record" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-4-2 NMSA 1978).

H. "Records custodian" means the statutory head of the agency using or maintaining the records or the custodian's

designee.

I. “Records management” means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

J. “Records retention and disposition schedule” means rules adopted by the commission pursuant to Section 14-3-4 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

K. “Retention” means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes. [8/8/96; 5/19/97; 1.15.3.7 NMAC - Rn, 1 NMAC 3.2.90.7, 10/01/2000; A, 1/6/2002; A, 1/5/2004; A, 12/19/2011]

1.15.3.8 ABBREVIATIONS AND ACRONYMS:

A. “SRC” stands for state records center

B. “USC” stands for United States code]

A. “CFR” stands for code of federal regulations.

B. “EDRRDS” stands for education records retention and disposition schedules.

C. “ERRDS” stands for executive records retention and disposition schedules.

D. “GRRDS” stands for general records retention and disposition schedules.

E. “JRRDS” stands for judicial records retention and disposition schedules.

F. “LRRDS” stands for legislative records retention and disposition schedules.

G. “LGRRDS” stands local government records retention and disposition schedules.

H. “SRCA” stands for state records center and archives.

I. “USC” stands for United States code.

[8/8/96; 5/7/97; 1.15.3.8 NMAC - Rn, 1 NMAC 3.2.90.8, 10/01/2000; N, 1/6/2002; A, 12/19/2011]

1.15.3.9 INSTRUCTIONS:

A. For records of an administrative nature, refer to the Records Retention and Disposition Schedule for General Administrative Records, 1.15.3 NMAC:

B. For records of a financial nature, refer to the Records Retention and Disposition Schedule for General Financial Records, 1.15.5 NMAC:

C. For records of a

personnel nature, refer to the Records Retention and Disposition Schedule for General Personnel Records 1.15.7 NMAC:

D. For records of a medical nature, refer to the Records Retention and Disposition Schedule for General Medical Records, 1.15.8 NMAC:

E. Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded:

F. The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description:

G. Confidentiality is denoted for files likely to contain confidential materials, but files without a confidentiality note nonetheless may contain confidential or privileged materials and failure to include an express confidentiality note in the description of a file does not waive the confidential or privileged nature of those materials. Refer questions concerning the confidentiality of a file or portions of a file to legal counsel for the agency:

H. Access to confidential documents or confidential files shall be only by authorization of agency or attorney general or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order:

I. All records, papers or documents may be photographed, microfilmed, microphotographed or reproduced on film. Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies (Section 14-1-5, 14-1-6 NMSA 1978):

J. Electronic records: Many paper records are being eliminated when the information has been placed on magnetic tapes, disks, or other data processing media. In these cases, the information on the data processing medium should be retained for the length of time specified in records retention and disposition schedules for paper records and should be subject to the same confidentiality and access restrictions as paper records. When the destruction of a record is required, all versions of said record shall be electronically over-written on machine readable media on which it is stored (or media destroyed). (See also 1.13.70 NMAC: Performance Guidelines for the Legal Acceptance of Public Records Produced by Information

Technology Systems):

K. An agency should not place an original or official copy of record on an agency’s website. An original or official copy of record is a public record, regardless of media, as defined by 14-2-6 NMSA 1978. A public record must be maintained for a specified amount of time and must go through the disposition process as stated in the general or agency’s records retention and disposition schedule. An agency should develop a plan for the management of the public records maintained on their website and integrate the plan into the agency’s overall records management program. For further guidance see the New Mexico chief information officer’s website for standards and guidelines for the creation and maintenance of a website.]:

A. Records retention and disposition schedules identify the types of records maintained by state agencies and specify a period of time which records must be retained. A retention period may be stated in terms of months or years and is sometimes expressed as contingent upon the occurrence of an event. There are several types of records retention and disposition schedules created by the SRCA for state agencies. General schedules list records common to all agencies and executive schedules list records specific to an agency. Each record series will be represented in the format listed below.

(1) Program - describes the function of the records

(2) Maintenance system - describes how an agency files (organizes) records

(3) Description - describes the purpose and content of a record

(4) Retention - defines the length of time records must be kept before they are eligible for destruction or archival preservation.

B. For records of a general administrative nature, refer to the GRRDS, General Administrative, 1.15.3 NMAC.

C. For records of a financial nature, refer to the GRRDS, General Financial, 1.15.5 NMAC.

D. For records of a personnel nature, refer to the GRRDS, General Personnel, 1.15.7 NMAC.

E. For records of a medical nature, refer to the GRRDS, General Medical, 1.15.8 NMAC.

F. Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

G. The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are included in a file that are not listed in the description, and similarly, not every file will contain an example of

each document listed in the description.

H. Confidentiality is denoted for files likely to contain confidential materials or information; however files without a confidentiality note may contain confidential or privileged information. Failure to include a confidentiality note in the description of a record series does not waive confidentiality. Refer questions concerning the confidentiality of a file to legal counsel for the agency.

I. Access to confidential documents, information or files shall be only by authorization of the agency records custodian (Section 14-2-8 NMSA 1978), or by the office of the attorney general or by court order, unless otherwise provided by law. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

J. Records may be photographed, microfilmed, digitized or converted to computer output microfilm provided a microphotography plan has been approved by the state records administrator (Section 14-3-17 NMSA 1978). Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction as evidence in all courts or administrative agencies (Section 14-1-6 NMSA 1978).

K. Public records placed on magnetic tapes, disks or other data processing media shall be retained for the length of time specified in records retention and disposition schedules and are subject to the same confidentiality and access restrictions as paper records. See also 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

L. Email is a transmission medium for content that may or may not be a public record. Email messages that contain information sent or received by an agency in connection with the transaction of official state business or in pursuance of law are public records and are subject to retention requirements established in records retention and disposition schedules. Email messages are required to be categorized, filed and retained on the basis of content (1.13.4 NMAC, Records Management Requirements for Electronic Messaging). The content of email messages may vary considerably; therefore, each email shall be evaluated to determine if it meets the definition of a public record as defined in the Public Records Act. Non-records or transitory emails that do not provide evidence of official agency policies or business transactions may be deleted.

M. The term "transfer to archives" for municipalities organizations refers to the organization's institutional archives for records assessed to have

significant historical value and warrant their preservation. The term "transfer to archives" for counties, educational institutions and all other political subdivisions refers to the archives and historical services division of the SRCA.

[1.15.3.9 NMAC - Rn, 1 NMAC 3.2.90.8 & A, 1/6/2002; A, 1/5/2004; A, 12/19/2011]

1.15.3.801 INFORMATION TECHNOLOGY SERVICE REQUESTS:

A. Program: information technology

B. Maintenance system: chronological by date

C. Description: records documenting requests for technical service assistance. Files may include service request form, response to request, information on the use of computer equipment for program delivery, security authorization form, etc.

D. Retention: three years after date request completed

[1.15.3.801 NMAC - N, 12/19/2011]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

November 15, 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:

- * 1.18.350 NMAC ERRDS, General Services Department
- * 1.18.420 NMAC ERRDS, Regulation and Licensing Department;
- * 1.18.465 NMAC ERRDS, Gaming Control Board;
- * 1.18.624 NMAC ERRDS, Aging and Long-Term Services Department; and
- * 1.18.630 NMAC ERRDS, Human Services Department.

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,

John Hyrum Martinez
State Records Administrator

JHM/lrl

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.350 NMAC ERRDS, General Services Department

1. Subject matter: 1.18.350 NMAC, Executive Records Retention and Disposition Schedule for the General Services Department. This is an amendment to the existing 1.18.350 NMAC ERRDS, General Services Department approved November 15, 2011 modifying Sections 3, 6, 7, 9, 101, 110 and 152. This records retention and disposition schedule is a timetable for the management of specific records series of the General Services Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the General Services Department.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the General Services Department. Persons and entities normally subject to the rules and regulations of the General 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 General Services Department.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the General Services Department. Any person or entity outside the covered geographical area that conducts business with or through the General Services Department may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this

rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: December 19, 2011.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.350 NMAC, ERRDS, General Services Department.

Tanya Maestas Date
Assistant Attorney General

**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 repealing Sections 305, 306 and 307 and adding Section 1200, 1201, 1202 and 1203. 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: December 19, 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

1.18.465 NMAC ERRDS, Gaming Control Board

1. Subject matter: 1.18.465 NMAC, Executive Records Retention and Disposition Schedule for the Gaming Control Board. This is an amendment to 1.18.465 NMAC, ERRDS, Gaming Control Board amending Sections 3, 7, 8, and 9 and adding Sections 70, 71, 72 and 73. 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 Gaming Control Board and legal

counsel for the Gaming Control Board.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Gaming Control Board. Persons and entities normally subject to the rules and regulations of the Gaming Control Board may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Gaming Control Board.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Gaming Control Board. Any person or entity outside the covered geographical area that conducts business with or through the Gaming Control Board 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: December 19, 2011.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.465 NMAC ERRDS, Gaming Control Board.

Tania Maestas Date
Assistant Attorney General

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

SYNOPSIS

1.18.624 NMAC ERRDS, Aging and Long Term Services Department

1. Subject matter: 1.18.624 NMAC, Executive Records Retention and Disposition Schedule for the Aging and Long Term Services Department. This is an amendment to 1.18.624 NMAC, ERRDS, Aging and Long Term Services Department repealing Sections 40, 41, 42,

49 and 50. 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 Executive Secretary of the Aging and Long Term Services Department and legal counsel for the Aging and Long Term Services Department.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Aging and Long Term Services Department. Persons and entities normally subject to the rules and regulations of the Aging and Long Term 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 Aging and Long Term Services Department.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Aging and Long Term Services Department. Any person or entity outside the covered geographical area that conducts business with or through the Aging and Long Term 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: December 19, 2011.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.624 NMAC ERRDS, Aging and Long Term Services Department

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 adding Sections 135, 136, 137, 143 and 144. 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 Human Services 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 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: December 19, 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 REAL ESTATE COMMISSION

16.61.1 NMAC, General Provisions (filed 11-16-2005) repealed and replaced by 16.61.1 NMAC, General Provisions, effective 1-1-2012.

16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Requirements (filed 11-17-2008) repealed and replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Requirements, effective 1-1-2012.

16.61.6 NMAC, Qualification of a Corporation, Partnership, or Association as a Real Estate Brokerage (filed 11-30-2001) repealed and replaced by 16.61.6 NMAC, Designation of a Qualifying Broker to Qualify a Real Estate Brokerage, effective 1-1-2012.

16.61.7 NMAC, Criminal Background Checks (filed 11-9-2006) repealed and replaced by 16.61.7 NMAC Fingerprinting and Arrest Record Checks, effective 1-1-2012.

16.61.15 NMAC, Approval of Real Estate Courses, Sponsors, and Instructors (filed 11-16-2006) repealed and replaced by 16.61.15 NMAC, Approval of Real Estate Courses, Sponsors, and Instructors, effective 1-1-2012.

16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities (filed 11-30-2001) repealed and replaced by 16.61.16 NMAC Qualifying Broker: Affiliation and Responsibilities, effective 1-1-2012.

16.61.23 NMAC, Special Trust Accounts, Custodial Accounts, and Other Accounts Containing Funds of Third Parties (filed 11-30-2001) repealed and replaced by 16.61.23 NMAC Trust Accounts, effective 1-1-2012.

16.61.24 NMAC, Property Management (filed 11-30-2001) repealed and replaced by 16.61.24 NMAC Property Management, effective 1-1-2012.

NEW MEXICO REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS PART 1 G E N E R A L PROVISIONS

16.61.1.1 ISSUING AGENCY:

New Mexico Real Estate Commission.

[16.61.1.1 NMAC - Rp, 16.61.1.1 NMAC, 1-1-2012]

16.61.1.2 SCOPE:

The provisions in Part 1 apply to all parts of Title 16, Chapter 61 and provide relevant information to brokers, applicants, other agencies, professional associations, and any member of the general public affected by or interested in Chapter 61 of Title 16.

[16.61.1.2 NMAC - Rp, 16.61.1.2 NMAC, 1-1-2012]

16.61.1.3 S T A T U T O R Y

AUTHORITY: Part 1 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.1.3 NMAC - Rp, 16.61.1.3 NMAC, 1-1-2012]

16.61.1.4 D U R A T I O N :

Permanent.

[16.61.1.4 NMAC - Rp, 16.61.1.4 NMAC, 1-1-2012]

16.61.1.5 EFFECTIVE DATE:

1-1-2012, unless a later date is cited at the end of a section.

[16.61.1.5 NMAC - Rp, 16.61.1.5 NMAC, 1-1-2012]

16.61.1.6 OBJECTIVE:

The objective of Part 1 of Chapter 61 is to set forth the provision, which apply to all of Chapter 61, and to all persons and entities affected by Chapter 61 of Title 16, and to define the terms and terminology related to real estate qualifying brokers and associate brokers used throughout Chapter 61 of Title 16.

[16.61.1.6 NMAC - Rp, 16.61.1.6 NMAC, 1-1-2012]

16.61.1.7 DEFINITIONS:

A. Acceptable financial institution: is a federally insured bank, savings and loan or title company authorized to do business in the state of New Mexico.

B. Agency: the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to

the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

C. Agent: the brokerage authorized solely, by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, "agent" means the person who has been authorized to act by that associate broker's qualifying broker.

D. Approved education course: a commission approved course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

E. Approved training course: A commission approved course offering in personal and property protection for the broker and clients; offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; offerings concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

F. Associate broker: a person holding a New Mexico associate broker's license who is affiliated with a New Mexico qualifying broker.

G. Broker: any person holding a current New Mexico associate broker's or qualifying broker's real estate license.

H. Brokerage: a person, corporation, partnership or association qualified by a New Mexico licensed qualifying broker to conduct real estate brokerage activity in New Mexico.

I. Brokerage relationship: the relationship between a customer or client and a brokerage for the provision of services in connection with a real estate transaction.

J. Brokerage trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during a real estate sales transaction.

K. Broker duties: the duties that brokers owe to their clients and customers in the course of a real estate transaction.

L. Broker in charge: a New Mexico licensed real estate broker qualified to be a qualifying broker who has been designated in writing by the qualifying broker to assume responsibility for the

brokerage during a period of time when supervision by the qualifying broker is not possible.

M. Client: a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.

N. Credit hours(s): credits toward education requirements as assigned by the real estate commission for each commission-approved course.

O. Custodial trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of an owner. The account shall be established in the owner's name with the qualifying broker as trustee. This account may be interest bearing.

P. Customer: a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

Q. Designated agent: a broker who is designated in writing by their qualifying broker to represent a client of the brokerage as their exclusive agent in a real estate transaction.

R. Designated agency: a policy chosen by the qualifying broker of a brokerage that discloses to a client of the brokerage that the broker representing them as an agent by means of an express written agency agreement is their only representative in the brokerage. The designated agency disclosure is made at the time that the client and the brokerage enter into an express written agency agreement, or at such time that the qualifying broker of a brokerage determines the need to designate one broker of the brokerage as agent of the buyer and another as agent of the seller in the same transaction.

S. Distance education: distance learning is education and training that takes place outside of the traditional classroom setting and in which other instructional media are used because the instructor, teaching materials, and student are separated by either distance or time.

T. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

U. Dual agent: the brokerage in a dual agency relationship working as a facilitator in a single transaction for both a buyer client and a seller client who have modified existing exclusive agency agreements with the brokerage.

V. Employee: for the purposes of Section 61-29-2 C (1) of the real estate license law, a person employed

by an owner of real property, or a person employed by the brokerage acting on behalf of the owner of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following:

(1) does the employer withhold income tax from the person's wages, salary, or commission;

(2) does the employer pay a portion of the person's FICA tax;

(3) is the person covered by workers' compensation insurance;

(4) does the employer make unemployment insurance contributions on behalf of the person.

W. Errors and omissions insurance: a type of professional liability insurance that provides insurance coverage to holders of active New Mexico real estate brokers licenses for errors and omissions made during the course of real estate transactions, subject to the coverages, limitations, and exclusions of the specific insurance policy or policies in place.

X. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

Y. Expired license: an associate broker's or qualifying broker's license that has not been renewed as of the last day of the month following the broker's birth month at the end of the broker's three-year licensing cycle.

Z. Express written agreement: any written agreement signed by all parties pertaining to a real estate transaction or the provision of real estate services.

AA. Facilitator: the role of a brokerage in either a dual agency relationship or a transaction brokerage relationship in which the exclusive relationships between a seller or landlord client or buyer or tenant client are modified so that the brokerage impartially facilitates the transaction.

BB. Foreign broker: a real estate brokerage licensed by a jurisdiction other than New Mexico engaged in real estate-related activities in New Mexico.

CC. Inactive broker: a New Mexico licensed real estate broker not currently affiliated with a New Mexico real estate brokerage and therefore ineligible to participate in any brokerage activity or collect fees or commissions in connection with such activity except as provided in Subsection C of 16.61.9.8 NMAC.

DD. In house transaction: a transaction that occurs under the supervision of one qualifying broker in the same brokerage.

EE. Land title trust account: a pooled interest-bearing account subject to the land title trust fund act.

FF. Mandatory course: the commission-approved course required of all brokers, except exempt brokers, as a condition of license renewal.

GG. Party to the transaction: a client or customer or any other person who utilizes real estate related services subject to the jurisdiction of the commission, not including a person who acquires an interest as security for an obligation.

HH. Person: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

II. Post-licensing course: the commission-approved new broker business practices course required within the first year of licensure of brokers first licensed in New Mexico as associate brokers on or after January 1, 2009.

JJ. Principal: any person who authorizes or employs another to do certain acts on behalf of that person.

KK. Property ledger: a record of deposits and disbursements within a trust account that are associated with the same property or owner.

LL. Property management: real estate services as specified by a management agreement which include, but are not limited to, the marketing, showing, renting and leasing of real property; the collection and disbursement of funds on behalf of owners; the supervision of employees and vendors; the coordination of maintenance and repairs; the management of tenant relations; or the preparation of leases or rental agreements, financial reports and other documents. In the course of listing and marketing properties for sale, inspections of the property, repairs and maintenance incident to the sale and authorized by the owner shall not be considered property management.

MM. Property management trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during the management of real property for others.

NN. Property manager: a broker who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others.

OO. Qualifying broker: a broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, and who discharges the responsibilities of a qualifying broker as set forth in 16.61.16.9 NMAC.

PP. Reconciliation: the process by which the property ledgers within a trust account are balanced with the trust

account and the trust account is balanced with the bank statement.

QQ. Referral: the communication by one broker or brokerage to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

RR. Responsible person: the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Section 61-29-12 A (7) NMSA 1978.

SS. Scope of authority: the range of authority granted by the principal to act on behalf of that principal.

TT. Short-term/vacation rental: with the exception of hotels and motels, the rental of real property for a period of 29 days or less.

UU. Special trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of a named party to a transaction. This account may be interest bearing.

VV. Sponsor: an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

WW. Subagent: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

XX. Transaction: any real estate activity subject to the jurisdiction of the commission.

YY. Transaction broker: a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

ZZ. Trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction which includes a brokerage trust account, property management trust account, custodial trust account or special trust account.

AAA. Unlicensed assistant: a person who does not hold an active New Mexico broker's license and works under the supervision of a responsible person to perform duties for the brokerage as provided in 16.61.21 NMAC.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1-1-2012]

16.61.1.8 OFFICES: The offices of the New Mexico real estate commission

will be located in Albuquerque, New Mexico.

[16.61.1.8 NMAC - Rp, 16.61.1.8 NMAC, 1-1-2012]

16.61.1.9 TELEPHONIC MEETING ATTENDANCE: Commission members may participate in a meeting of the commission by means of a conference telephone or similar communications equipment and participation by telephone may only occur when it is difficult or impossible for commission members to attend a meeting of the commission, i.e. when circumstances beyond the member's control would make attendance in person extremely burdensome.

[16.61.1.9 NMAC - Rp, 16.61.1.9 NMAC, 1-1-2012]

HISTORY of 16.61.1 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under: REC 73-1, Real Estate License Law Manual, filed 10-2-73; REC-1, (filed as Rule No. 1, Amendment No. 1) Purpose of Rules, Office Location, filed 6-15-79; REC 70-1, Purpose of Rules, Office Location, filed 10-6-81; REC 71-1, Purpose of Rules, Office Location, Definitions, filed 11-29-82; Rule No. 1, Purpose of Rules, Office Location, Definitions, filed 12-18-87; NMREC Rule 1, Purpose of Rules, Office Location, Definitions, filed 12-17-91; NMREC Rule 1, Purpose of Rules, Office Location, Definitions, filed 10-3-94; Rule No. 1, Purpose of Rules, Office Location, Definitions, filed 6-16-95; NMREC Rule 20, Telephonic Attendance by Commission Member, filed 10-3-94.

History of Repealed Material:

16 NMAC 61.1, General Provisions (filed 12-17-96) repealed 1-1-2000.
16.61.1 NMAC, General Provisions (filed 11-19-2003) repealed 1-1-2006.
16.61.1 NMAC, General Provisions (filed 11-16-2005) repealed 1-1-2012.

Other History:

Rule No. 1, Purpose of Rules, Office Location, Definitions (filed 6-16-95) and NMREC Rule 20, Telephonic Attendance by Commission Member (filed 10-3-94) both renumbered, reformatted, and replaced by 16 NMAC 61.1, General Provisions, effective 1-31-97.
16 NMAC 61.1, General Provisions (filed 12-17-96) was replaced by 16 NMAC 61.1, General Provisions, effective 1-1-2000.
16 NMAC 61.1, General Provisions (filed 12-10-99) reformatted, amended, renumbered and replaced by 16.61.1 NMAC, General Provisions, effective 1-1-2002.

16.61.1 NMAC, General Provisions (filed 11-19-2003) was replaced by 16.61.1 NMAC, General Provisions, effective 1-1-2006.

16.61.1 NMAC, General Provisions (filed 11-16-2005) was replaced by 16.61.1 NMAC, General Provisions, effective 1-1-2012.

NEW MEXICO REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS

PART 3 REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS

16.61.3.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.3.1 NMAC - Rp, 16.61.3.1 NMAC, 1-1-2012]

16.61.3.2 SCOPE: The provisions in Part 3 of Chapter 61 apply to all applicants for real estate broker licensure in New Mexico.
[16.61.3.2 NMAC - Rp, 16.61.3.2 NMAC, 1-1-2012]

16.61.3.3 STATUTORY AUTHORITY: Part 3 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.
[16.61.3.3 NMAC - Rp, 16.61.3.3 NMAC, 1-1-2012]

16.61.3.4 DURATION: Permanent.
[16.61.3.4 NMAC - Rp, 16.61.3.4 NMAC, 1-1-2012]

16.61.3.5 EFFECTIVE DATE: 1-1-2012, unless a later date is cited at the end of a section.
[16.61.3.5 NMAC - Rp, 16.61.3.5 NMAC, 1-1-2012]

16.61.3.6 OBJECTIVE: The objective of Part 3 of Chapter 61 is to set forth the examination and application requirements for candidates desiring to obtain a New Mexico real estate broker's license.
[16.61.3.6 NMAC - Rp, 16.61.3.6 NMAC, 1-1-2012]

16.61.3.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.3.7 NMAC - Rp, 16.61.3.7 NMAC, 1-1-2012]

16.61.3.8 TYPES OF

LICENSES: The New Mexico real estate commission issues two types of real estate broker's licenses; an associate broker's license and a qualifying broker's license. Both types of licenses are issued only to individuals. The requirements for obtaining both types of licenses are described below.
[16.61.3.8 NMAC - N, 1-1-2012]

16.61.3.9 EXAMINATION AND LICENSING REQUIREMENTS:

A. Associate broker's license: prior to applying for an associate broker's license, an applicant must pass the real estate broker's examination prescribed by the commission.

B. Examination application.

(1) Applications to take the broker's examination are made directly to the commission's examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved 30 hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics. These pre-licensing courses must have been completed within the three years prior to application.

(2) Exam candidates currently licensed as real estate salespersons or brokers in other states or jurisdictions will be exempted from completing the real estate principles and practice and real estate law courses in New Mexico if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent.

(3) Except in a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commission has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved 30 hour broker basics course.

(4) License applicants currently licensed by state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of the prescribed pre-licensing courses or take either portion of the broker's examination to be eligible to apply for a New Mexico broker's license.

(5) Exam applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker's license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the 30 hour broker basics course.

(6) All other applicants for the examination shall attach to their license

examination application certificates documenting completion of one 30 hour pre-licensing course each in real estate principles and practice, real estate law, and broker basics.

(7) At the time of making application to take the examination, applicants shall pay to the commission's examination contractor a non-refundable fee not to exceed \$95.

(8) Applicants are required to pass both the state and national portions of the examination with a minimum score of 75 no later than 90 calendar days after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker's license.

C. License application.

(1) Upon passing both portions of the New Mexico real estate broker's examination, an individual has six months to apply for an associate broker's license on the application prescribed by the commission.

(2) An individual who fails to apply for an associate broker's license within six months of having passed both portions of the broker's examination shall be required to re-take both portions of the examination, 1six month deadline.

(3) An applicant for an associate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

(4) Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that he/she has passed both portions of the examination with a minimum score of 75, documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

D. Qualifying broker's license examination: there is no separate qualifying broker's examination.

E. License application.

(1) Before being issued a qualifying broker's license, an applicant must document that their associate broker's or equivalent license has been on active status with a real estate brokerage for two of the last five years immediately preceding their application to become a qualifying broker, and must provide a certificate of completion of the commission-approved 30 hour brokerage office administration course.

Applicants with current licenses who can document that they were New Mexico qualifying broker's on or before December 31, 2005 are not subject to those requirements and may regain qualifying broker status by filling a trade name registration form and paying the trade name registration fee to the commission.

(2) Brokers who were salespersons on January 1, 2006 when the license law was amended to eliminate the salesperson category and were converted to associate broker status, shall in addition to meeting the requirements in the preceding section, document that they have met the requirements for and passed the associate broker's examination prior to being issued a qualifying broker's license.

(3) An application for a New Mexico qualifying broker's license shall be made on the form prescribed by the commission and shall be accompanied with documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

[16.61.3.9 NMAC - Rp, 16.61.3.8 NMAC, 1-1-2012]

HISTORY OF 16.61.3 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under: Real Estate License Law Manual, filed 10-2-73; REC-9, filed as Rule No. 9 Amendment No. 2 Broker Examinations; Time for Filing; Place of, filed 6-15-79; REC 80-2, filed as Rule No. 9 Amendment No. 3, Broker Examinations; Time for Filing, Place of, filed 7-17-80; REC 70-7, Broker Examinations - Time for Filing - Place of, filed 10-6-81; REC 71-7, Broker Examinations - Time for Filing - Place of, filed 11-29-82; Rule No. 2, Examinations-Requirements/Application for, filed 12-18-87; NMREC Rule No. 2 Examination-Requirements/Application for, filed 10-3-94.

History of Repealed Material:

16 NMAC 61.3, Broker's License: Examination and Application Requirements (filed 6-25-97) repealed 1-1-2000.
16 NMAC 61.3, Broker's License: Examination and Licensing Requirements (filed 12-10-99) repealed 1-1-2002.
16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements (filed 11-30-2001) repealed 1-1-2006.
16.61.3 NMAC, Real Estate Broker's

License: Examination and Licensing Application Requirements (filed 11-16-2005) repealed 12-31-2008.

16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11-17-2008) repealed 1-1-2012.

Other History:

That applicable portion of NMREC Rule No. 2 Examination-Requirements/Application for (filed 10-3-94) was renumbered, reformatted, and replaced by 16 NMAC 61.3, Broker's License: Examination and Application Requirements, effective 8-15-97.

16 NMAC 61.3, Broker's License: Examination and Application Requirements (filed 6-25-97) was replaced by 16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements, effective 1-1-2000.

16 NMAC 61.3, Broker's License: Examination and Licensing Application Requirements (filed 12-10-99) was replaced by 16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements, effective 1-1-2002.

16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements (filed 11-30-2001) was replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, effective 1-1-2006.

16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11-16-2005) replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, effective 12-31-2008.

16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11-17-2008) replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, effective 1-1-2012.

**NEW MEXICO REAL
ESTATE COMMISSION**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE
BROKERS
PART 6 DESIGNATION OF A
QUALIFYING BROKER TO QUALIFY
A REAL ESTATE BROKERAGE**

16.61.6.1 ISSUING AGENCY:
New Mexico Real Estate Commission.
[16.61.6.1 NMAC - Rp, 16.61.6.1 NMAC,
1-1-2012]

16.61.6.2 SCOPE: The
provisions in Part 6 of Chapter 61 apply to
all persons wishing to qualify a corporation,
partnership, or association as a real estate
brokerage.
[16.61.6.2 NMAC - Rp, 16.61.6.2 NMAC,
1-1-2012]

**16.61.6.3 S T A T U T O R Y
AUTHORITY:** Part 6 of Chapter 61 is
promulgated pursuant to the Real Estate
Licensing Law, NMSA 1978 Section 61-29-
4.
[16.61.6.3 NMAC - Rp, 16.61.6.3 NMAC,
1-1-2012]

16.61.6.4 D U R A T I O N :
Permanent.
[16.61.6.4 NMAC - Rp, 16.61.6.4 NMAC,
1-1-2012]

16.61.6.5 EFFECTIVE DATE:
1-1-2012, unless a later date is cited at the
end of a section.
[16.61.6.5 NMAC - Rp, 16.61.6.5 NMAC,
1-1-2012]

16.61.6.6 OBJECTIVE: The
objective of Part 6 of Chapter 61 is to set
forth policies for qualifying a corporation,
partnership, or association as a real estate
brokerage.
[16.61.6.6 NMAC - Rp, 16.61.6.6 NMAC,
1-1-2012]

16.61.6.7 DEFINITIONS: Refer
to 16.61.1.7 NMAC.
[16.61.6.7 NMAC - Rp, 16.61.6.7 NMAC,
1-1-2012]

16.61.6.8 REQUIREMENTS:
Upon compliance with all requirements
set out in the real estate license law and
the real estate commission rules for
licensure as a New Mexico qualifying
broker, the commission shall issue a New
Mexico qualifying broker's license to the
applicant(s). Such license shall bear the
name of the qualifying broker, the trade
name of the brokerage and the address as

registered with the commission. In the event
a qualifying broker is unable for any reason
to perform their qualifying broker duties, a
corporate officer, family member or other
responsible person, shall designate a broker
in charge until such time as an individual
files a trade name registration form with the
commission.

[16.61.6.8 NMAC - Rp, 16.61.6.8 NMAC,
1-1-2012]

HISTORY of 16.61.6 NMAC:

Pre-NMAC History:

The material in this part was derived from
that previously filed with the state records
center and archives under:

Real Estate License Law Manual filed 10-2-
73;

REC-13, Rule No. 13 Amendment No. 1,
Qualifications for License, filed 6-15-79;

REC 70-11, Qualifications for License, filed
10-6-81;

Rule No. 3, Corporate, Partnership or
Association Licensure, filed 12-18-87.

History of Repealed Material:

16.61.6 NMAC, Corporate, Partnership, or
Association Licensure (filed 11-30-2001)
repealed 1-1-2012.

Other History:

Rule No. 3, Corporate, Partnership or
Association Licensure (filed 12-18-87) was
renumbered and replaced by 16 NMAC
61.6, Corporate, Partnership, or Association
Licensure, effective 8-15-97.

16 NMAC 61.6, Corporate, Partnership, or
Association Licensure (filed 6-25-97) was
reformatted, renumbered, amended and
replaced by 16.61.6 NMAC, Corporate,
Partnership, or Association Licensure,
effective 1-1-2002.

16.61.6 NMAC, Qualification of a
Corporation, Partnership, or Association
as a Real Estate Brokerage (filed 11-30-
2001) was replaced by 16.61.6 NMAC,
Designation of a Qualifying Broker to
Qualify a Real Estate Brokerage, effective
1-1-2012.

[Continued on page 811]

NEW MEXICO REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS PART 7 FINGERPRINTING AND ARREST RECORD CHECKS

16.61.7.1 ISSUING AGENCY:
New Mexico Real Estate Commission.
[16.61.7.1 NMAC - Rp, 16.61.7.1 NMAC,
1-1-2012]

16.61.7.2 SCOPE: The provisions
in Part 7 apply to Title 16, Chapter 16 and
provide relevant information about criminal
background check requirements for a first-
time or renewal applicant for a New Mexico
real estate broker's license.
[16.61.7.2 NMAC - Rp, 16.61.7.2 NMAC,
1-1-2012]

**16.61.7.3 STATUTORY
AUTHORITY:** Part 7 of Chapter 61 is
promulgated pursuant to the Real Estate
Licensing Law, NMSA 1978, Section 61-29-
4.4.
[16.61.7.3 NMAC - Rp, 16.61.7.3 NMAC,
1-1-2012]

16.61.7.4 DURATION:
Permanent
[16.61.7.4 NMAC - Rp, 16.61.7.4, NMAC,
1-1-2012]

16.61.7.5 EFFECTIVE DATE:
1-1-2012, unless a later date is cited at the
end of a section.
[16.61.7.5 NMAC - Rp, 16.61.7.5 NMAC,
1-1-2012]

16.61.7.6 OBJECTIVE: The
objective of Part 7 is to ensure that first-time
or renewal applicants for a New Mexico real
estate broker's license are of good repute
and competent to transact the business of a
qualifying broker or associate broker in a
manner that safeguards the interests of the
public.
[16.61.7.6 NMAC - Rp, 16.61.7.6, NMAC,
1-1-2012]

16.61.7.7 DEFINITIONS: Refer
to 16.61.1.7 NMAC
[16.61.7.7 NMAC - Rp, 16.61.7.7 NMAC,
1-1-2012]

16.61.7.8 REQUIREMENTS:
A. All persons applying
for or renewing a New Mexico real estate
broker's license or upgrading an associate
broker's license to a qualifying broker's
license must submit to the New Mexico
department of public safety two completed

fingerprint cards, a completed company
or law enforcement agency fingerprint
certification form, and a check or money
order for the applicable fee payable to the
department of public safety.

B. Applicants for licensure
or license renewal shall submit to the
commission along with their license or
renewal application a copy of the fingerprint
certification form completed by the company
or law enforcement agency that fingerprints
the applicant. The commission will not issue
a new license prior to receiving a report
from the federal bureau of investigation of
the results of the match of the applicant's
fingerprints with state and national arrest
record databases. However, license renewal
applications will be processed upon receipt
of a copy of the fingerprint certification
form.

C. Fingerprint cards will
be submitted to the New Mexico department
of public safety for purposes of matching
with fingerprints in state and national arrest
record databases. Fingerprint cards shall
be provided to license applicant's by the
commission. Fingerprints shall be taken:

(1) under the supervision of and
certified by a certified law enforcement
officer, or

(2) by a private agency or company
qualified to take and certify fingerprints.

D. The frequency with
which a license applicant will be required
to submit a new set of fingerprints will be
determined by the commission's authority
under state law to re-submit an existing set
of fingerprints for an arrest record update.
[16.61.7.8 NMAC - Rp, 16.61.7.8 NMAC,
1-1-2012]

HISTORY OF 16.61.7 NMAC:

History of Repealed Material:

16.61.7 NMAC, Criminal Background
Checks (filed 11-9-2006) repealed 1-1-2012.

NEW MEXICO REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS PART 15 APPROVAL OF REAL ESTATE COURSES, SPONSORS, AND INSTRUCTORS

16.61.15.1 ISSUING AGENCY:
New Mexico Real Estate Commission.
[16.61.15.1 NMAC - Rp, 16.61.15.1 NMAC,
1-1-2012]

16.61.15.2 SCOPE: The
provisions in Part 15 of Chapter 61 apply to
all real estate pre-licensing and continuing
education course sponsors and instructors

wishing to obtain accreditation to offer and
teach real estate pre-licensing and continuing
education courses to New Mexico real estate
brokers.

[16.61.15.2 NMAC - Rp, 16.61.15.2 NMAC,
1-1-2012]

**16.61.15.3 STATUTORY
AUTHORITY:** Part 15 of Chapter 61 is
promulgated pursuant to the Real Estate
Licensing Law, NMSA 1978 Section 61-29-
4.

[16.61.15.3 NMAC - Rp, 16.61.15.3 NMAC,
1-1-2012]

16.61.15.4 DURATION:
Permanent.

[16.61.15.4 NMAC - Rp, 16.61.15.4 NMAC,
1-1-2012]

16.61.15.5 EFFECTIVE DATE:
1-1-2012, unless a later date is cited at the
end of a section.

[16.61.15.5 NMAC - Rp, 16.61.15.5 NMAC,
1-1-2012]

16.61.15.6 OBJECTIVE: The
objective of Part 15 of Chapter 61 is to set
forth the procedures and requirements for
the accreditation of real estate continuing
education and pre-licensing sponsors,
courses, and instructors.

[16.61.15.6 NMAC - Rp, 16.61.15.6 NMAC,
1-1-2012]

16.61.15.7 DEFINITIONS: Refer
to 16.61.1.7 NMAC.

[16.61.15.7 NMAC - Rp, 16.61.15.7 NMAC,
1-1-2012]

**16.61.15.8 EDUCATION
STEERING COMMITTEE:** The
commission shall appoint an education
steering committee (ESC) with the goal of
upgrading and improving the real estate
education program in order to carry out
the commission's mission of protecting
the public and increasing the professional
competence of real estate brokers.

A. The committee shall
meet monthly or as required for the purpose
of certification reviews of real estate
sponsors, courses, and instructors and shall
make recommendations to the commission
as to its findings.

(1) The committee shall use
specific criteria to evaluate a course, an
instructor or course sponsor for approval.
This specific criteria shall consider both
the instructor's depth of knowledge of the
subject and the instructor's ability to convey
that knowledge.

(2) The committee shall clearly
state in writing to the applicant the reasons
for which a course, an instructor or course
sponsor are not approved.

(3) A sponsor or instructor

applicant not recommended for approval by the committee may ask the commission to review the committee's unfavorable recommendation.

B. The committee shall consist of at least nine members appointed by the commission. Each member shall serve a term of three years or until their successors are appointed. The commission may remove a member for cause.

[16.61.15.8 NMAC - Rp, 16.61.15.8 NMAC, 1-1-2012]

16.61.15.9 APPROVAL OF EDUCATION PROGRAMS:

A. Courses offered for New Mexico real estate commission approved credit must be offered by sponsors approved by the New Mexico real estate commission.

B. Applications for sponsor, instructor and course approvals shall be accompanied by the fee(s) specified in 16.61.2.8 NMAC of the commission rules.

(1) An approved education category course shall consist of a course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, and ethical practice of real estate; and real estate related local, state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

(2) Approved training category courses include personal and property protection for the broker and clients; using the computer, the internet, business calculators and other technologies to enhance the broker's service to the public; concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

(3) With the exception of courses taken in states with which New Mexico has a written license recognition agreement, non-acceptable continuing education classes shall include courses taken in fulfillment of another state's continuing education requirements. Other non-acceptable courses include mechanical office and business skills such as typing; speed reading; memory improvement; language report writing; offerings concerning physical well-being or personal development such as personal motivation; stress management; time management; dress-for-success; or similar courses.

C. The ESC shall review instructor candidates:

(1) to determine the candidate's knowledge of the subject matter;

(2) to determine the candidate's ability to communicate his/her knowledge to students;

(3) to determine if the candidate uses appropriate teaching delivery skills;

(4) to determine if the candidate is honest, truthful, reputable, and competent. [16.61.15.9 NMAC - Rp, 16.61.15.9 NMAC, 1-1-2012]

16.61.15.10 APPROVAL OF SPONSORS AND RESPONSIBILITIES:

A. All sponsors wishing to offer commission approved courses for credit must be approved by the commission before the course being offered for credit.

B. Educational institutions, proprietary schools, professional organizations or businesses wishing to become commission approved sponsors must submit a completed sponsor application form with supporting documentation as required by the commission.

C. The commission will maintain a list of approved sponsors.

D. An approved sponsor shall comply with the following requirements:

(1) conduct all courses in accordance with commission rules and education policies, and in accordance with approved course content;

(2) permit all New Mexico real estate brokers to attend all classes offered by the sponsor for which continuing education credit is awarded;

(3) document electronically to the real estate commission that the student has completed the course;

(a) certify no candidate as successfully completing the broker basics or brokerage office administration course unless the student has attended at least 90% of the classroom instruction and has passed a written examination at the conclusion of the course;

(b) certify no broker as successfully completing a commission approved course unless the broker has attended 50 minutes of each hour, or successfully completed a distance education course approved by the New Mexico real estate commission. In the case of a course that is offered in both live and distance education formats, the sponsor shall have discretion as to completion and certification;

(4) maintain current, complete, and accurate student records; these records shall include, but not be limited to, a record of payments made, a record of attendance, and a record of course work completed; records shall be maintained for a period of three years;

(5) permit the commission or its representative access to classes being conducted, and make available to the commission, upon request, all information pertaining to the activities of the sponsor;

(6) advertise at all times in a manner free from misrepresentation,

deception or fraud; all course advertising must include the name of the commission-approved sponsor, and must specify whether the course is in the education or training category;

(7) in the event a sponsor determines that it intends to cease sponsoring real estate classes it shall inform the commission in writing not less than 30 days before cessation;

(8) advise the commission within 30 days of changes in ownership, directorship, financial status, location or other pertinent information, and reapply for sponsorship in the event of change of majority ownership;

(9) at the end of each course, the sponsor shall collect from each student an evaluation that evaluates adherence to course content, the effectiveness of the instructor, and other prescribed criteria; the evaluation forms shall be maintained by the sponsor for not less than one year and shall be made available to the commission upon request;

(10) renew sponsorship approval every three years by submitting a sponsor renewal form and renewal fee to the commission;

(11) shall meet the requirements of the Americans with Disabilities Act and all other local, state and federal laws.

E. Failure to comply with this rule may result in the loss of sponsor approval. The commission may investigate any claim of violation of this rule pursuant to 16.61.36.8 NMAC of the commission rules.

[16.61.15.10 NMAC - Rp, 16.61-15.10 NMAC, 1-1-2012]

16.61.15.11 APPROVAL OF COURSES:

A. Any pre-licensing or continuing education course must have been approved by the commission before the course being offered for credit. Courses must incorporate New Mexico law and regulations when relevant. A course application form must be completed and submitted to the commission before consideration of a course for approval by the education steering committee (ESC).

(1) Before course approval, the instructor teaching the course shall make a presentation before the ESC according to presentation criteria established by the ESC.

(2) The ESC shall assign the number of credit hours to each course and determine whether the course is in the education or training category.

(3) Commission approved pre-licensing courses may count for up to ten credit hours toward continuing education requirements for license renewal.

B. The ESC may waive an ESC course presentation appearance by a nationally recognized professional real estate organization that provides

professional designations if the organization can document to the ESC's satisfaction that the course instructor received training in the course subject matter in addition to attending a train the trainer class.

C. The commission must approve any continuing education course offered for one-time credit before the course being offered.

(1) A commission approved application form for one-time credit approval must be completed and submitted to the ESC before consideration of the course for credit.

(2) Approved sponsors are limited to four course submittals for one-time credit during each calendar year.

(3) The sponsor, or its representative, requesting one-time course credit, shall make a presentation before the ESC according to presentation criteria established by the ESC.

D. The course shall conform to the generally accepted principles of education as prescribed by the real estate educators association (REEA) and shall comply with commission approved course content requirements. The minimum length of a course shall be one hour.

E. The commission will maintain a list of courses that have been approved for credit.

F. If the course represents an update to a previously approved course, and new material becomes available, the instructor shall be responsible for updating the course and presenting the most current information. Significant changes to course outlines should be provided by the instructor to the commission's education administrator as they occur. If a course outline has not been updated within the last three years the ESC may, at its discretion, recommend to the commission that the course be removed from the list of approved courses.

G. Distance education: For purposes of this part, distance learning is education and training that takes place outside of the traditional classroom setting and in which non-traditional instructional media are used because the teacher and student are separated by distance or time. Distance education sponsors seeking continuing education credit for their courses will be required to designate a New Mexico approved instructor to make a presentation to the ESC and shall submit for ESC review and approval:

(1) course syllabus which clearly states the course objectives and the specific learning objectives for desired student competencies;

(2) instructions for accessing, using and testing the online materials for ESC auditing purposes including everything necessary for evaluating course content materials, duration, accuracy and timeliness;

(3) reference materials appropriate

to the course;

(4) when a series of courses is offered in a curriculum, evidence of sequential development and logical progression;

(5) description of the method, such as examination and quizzes, by which student progress and mastery of the subject matter are measured, and for determining what is required for a student to successfully complete the course;

(6) description of the method by which student identity is verified, such as user name and password;

(7) the names, telephone numbers and email addresses of individuals, websites or other resources that students can contact for technical assistance;

(8) the New Mexico instructor approved to teach the course must be available to answer subject matter questions during regularly posted hours;

(9) a description of the methodology used by the sponsor in determining the classroom hour equivalency of each distance education course.

[16.61.15.11 NMAC - Rp, 16.61.15.11 NMAC, 1-1-2012]

16.61.15.12 APPROVAL OF INSTRUCTORS:

A. Commission approved course instructors. Instructors must be approved by the commission before teaching courses. The following requirements apply to all commission approved courses.

(1) Be honest, truthful, reputable and competent.

(2) Submit a commission-approved application before presenting the course to the ESC.

(3) Complete a commission approved instructor training course within one year of being initially approved as an instructor and every three years thereafter. Instructors who fail to submit documentation of completion of the instructor-training course will not be re-certified.

(4) Provide copies of student handouts during their course presentation.

(5) Make a minimum 15 minute presentation to the ESC exhibiting their teaching skills and knowledge of the subject matter, and be prepared to answer questions. Presentations must conform to the generally accepted principles of education (GAPE) as established by the real estate educators' association (REEA).

B. Pre-licensing instructors. Pre-licensing courses include: real estate law, real estate principles and practices, broker basics and brokerage office administration. In addition to Subsection A above, these instructor candidates must:

(1) pass the New Mexico broker's examination with a minimum score of 84 within the previous three years from the date

of application;

(2) audit the course they wish to teach before being approved as an instructor for that course; documentation of having audited the course must be submitted with the candidate's application;

(3) broker basics: be approved to teach real estate law and real estate principles and practice;

(4) brokerage office administration: be approved to teach real estate law and real estate principles and practice and broker basics; in addition, candidates must also have two years experience as a qualifying broker in New Mexico or another licensing jurisdiction.

C. Mandatory course instructors. In addition to Subsection A above mandatory course instructor candidates must:

(1) be a currently approved instructor for real estate law and real estate principles and practice or be currently approved to teach three or more continuing education courses;

(2) ensure the mandatory course materials they present include the most recent updates provided by the New Mexico real estate commission; and

(3) make a minimum 60 minute presentation to the ESC and answer questions.

D. Qualifying broker refresher course instructors. In addition to Subsection A above, qualifying broker refresher course instructor candidates must comply with one of the following:

(1) be a currently approved instructor for real estate law and real estate principles and practice and broker basics and be a qualifying broker or would qualify to be one; or

(2) be approved to teach the mandatory course and be a qualifying broker.

E. New broker business practices post-licensing course instructors. In addition to Subsection A above, new broker business practices course instructors must:

(1) have two years experience as an active qualifying broker with supervisory responsibilities or two years actively licensed as an associate broker and served in the capacity as a trainer for the brokerage, or two years actively licensed as an associate broker and be approved as a continuing education instructor;

(2) attend, when offered, a commission approved train-the-trainer on how to instruct the post-licensing course and attend, when offered, a periodic update of the course offered by the commission or the commission contractor; and

(3) make a minimum 60 minute presentation to the ESC and answer questions.

F. ESC approval process.

The ESC will make its recommendation to the commission to grant or deny instructor approval. If the application is denied, a written evaluation to the candidate will provide specific reasons for denial and recommendations for improvement. An instructor candidate not recommended for approval by the ESC may ask the commission to review the ESC's unfavorable recommendation.

G. **Post-approval** requirements. After approval all instructors must comply with the following:

- (1) pay applicable fee(s);
- (2) conduct all classes in accordance with commission rules and educational policies;
- (3) ensure all instruction is free from all misrepresentation, solicitations of products and recruitment;
- (4) conform to commission-approved course content requirements; and
- (5) allow access to any class to any duly appointed representative of the commission.

H. **Instructor approval** expiration and re-certification.

(1) **Expiration.** Instructor approvals expire on the same three-year cycle as the instructor's broker's license. If an instructor is not a real estate broker, then the expiration will be three years from the date of initial approval.

(2) **Re-certification.** Instructors seeking re-certification shall:

- (a) submit the commission-approved form;
- (b) submit documentation of having completed a commission-approved instructor training course;
- (c) an instructor who has not taught a course in the preceding three year instructor renewal cycle will not be recertified to teach that course; an instructor may submit at the time of renewal, a written request to the ESC to be re-certified to teach that course; the written request must specify how the instructor has remained current on the course material, and must include the course outline and course material.

I. **Failure to comply** with this part may result in the loss of instructor approval. The commission may investigate any claim of instructor impropriety pursuant to 16.61.36.8 NMAC of the commission rules.

[16.61.15.12 NMAC - Rp, 16.61.15.12 NMAC, 1-1-2012]

HISTORY OF 16.61.15 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under: Rule No. 7, Education: Accreditation of Sponsors/Courses/Instructors, filed 12-18-87; NMREC Rule 7, Education: Accreditation of

Sponsors/Courses/Instructors, filed 10-3-94.

History of Repealed Material:

16 NMAC 61.15, Continuing Education: Accreditation of Sponsors; Courses; Instructors (filed 6-25-97) repealed 1-1-2000.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11-30-2001) repealed 1-1-2006.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11/16/2005) repealed 1-1-2007.

16.61.15 NMAC, Approval of Real Estate Courses, Sponsors, and Instructors (filed 11/16/2006) repealed 1-1-2012.

Other History:

NMREC Rule 7, Education: Accreditation of Sponsors/Courses/Instructors (filed 10-3-94) was reformatted, renumbered, and replaced by 16 NMAC 61.15, Continuing Education: Approval of Sponsors, Courses, Instructors, effective 8-15-97.

16 NMAC 61.15, Continuing Education: Accreditation of Sponsors; Courses; Instructors (filed 6-25-97) was replaced by 16 NMAC 61.15, Continuing Education: Approval of Sponsors, Courses, Instructors, effective 1-1-2000.

16 NMAC 61.15, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 12-10-99) reformatted, amended, renumbered, and replaced by 16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors, effective 1-1-2002.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11-30-2001) replaced by 16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors, effective 1-1-2006.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11/16/2005) replaced by 16.61.15 NMAC, Approval of Real Estate Courses, Sponsors, and Instructors, effective 1-1-2007.

16.61.15 NMAC, Approval of Real Estate Courses, Sponsors, and Instructors (filed 11/16/2006) replaced by 16.61.15 NMAC, Approval of Real Estate Courses, Sponsors, and Instructors, effective 1-1-2012.

NEW MEXICO REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS

PART 16 QUALIFYING BROKER: AFFILIATION AND RESPONSIBILITIES

16.61.16.1 ISSUING AGENCY: New Mexico Real Estate Commission.

[16.61.16.1 NMAC - Rp, 16.61.16.1 NMAC, 1-1-2012]

16.61.16.2 SCOPE: The provisions in Part 16 of Chapter 61 apply to all New Mexico qualifying brokers.

[16.61.16.2 NMAC - Rp, 16.61.16.2 NMAC, 1-1-2012]

16.61.16.3 STATUTORY AUTHORITY: Part 16 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.16.3 NMAC - Rp, 16.61.16.3 NMAC, 1-1-2012]

16.61.16.4 DURATION: Permanent.

[16.61.16.4 NMAC - Rp, 16.61.16.4 NMAC, 1-1-2012]

16.61.16.5 EFFECTIVE DATE: 1-1-2012, unless a later date is cited at the end of a section.

[16.61.16.5 NMAC - Rp, 16.61.16.5 NMAC, 1-1-2012]

16.61.16.6 OBJECTIVE: The objective of Part 16 of Chapter 61 is to set forth the responsibilities, in addition to all other requirements imposed by law, of a qualifying broker.

[16.61.16.6 NMAC - Rp, 16.61.16.6 NMAC, 1-1-2012]

16.61.16.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.

[16.61.16.7 NMAC - Rp, 16.61.16.7 NMAC, 1-1-2012]

16.61.16.8 AFFILIATION: A qualifying broker is responsible for all real estate activities within the brokerage. A qualifying broker may serve concurrently as a qualifying broker for more than one brokerage. A qualifying broker may by written agreement engage the services of associate brokers and qualifying brokers, provided that the terms of such agreements are consistent with the responsibilities of associate brokers and qualifying brokers as set forth in parts 16.61.16.9 NMAC

and 16.61.17.9 NMAC. A qualifying broker may serve as qualifying broker and associate broker for different brokerages simultaneously provided that there are written agreements executed specifying the responsibilities and scope of authority that the broker has for each brokerage. [16.61.16.8 NMAC - Rp, 16.61.16.8 NMAC, 1-1-2012]

16.61.16.9 RESPONSIBILITIES:

A qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

A. conduct the real estate brokerage business under the trade name and from the brokerage address or addresses registered with the commission;

B. prominently display in the brokerage office, the qualifying broker's own license and the licenses of all other affiliated associate brokers conducting real estate brokerage business from the brokerage office;

C. have in the brokerage office and available to all affiliated associate brokers and qualifying brokers a current copy of the state of the New Mexico real estate license law and rules manual;

D. notify the commission in writing within ten days of a change of the brokerage office address or telephone number;

E. supervise all real estate related activities including advertising of real estate or real estate services conducted on behalf of others by associate brokers and qualifying brokers affiliated with the brokerage and execute and maintain current written employment or independent contractor agreements with them;

F. maintain full and complete records wherein the qualifying broker and affiliated associate broker(s) are engaged on behalf of others, or on their own behalf, in real estate related matters processed through the brokerage; the required records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office; all such records whether in paper or electronic format shall be retained for a period not less than six years; in the case of a property manager, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement;

G. deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably possible after securing signatures of all parties to the transaction documents;

H. receive and disburse all commissions, referral fees, and other considerations to any broker affiliated with the qualifying broker, or broker who had been affiliated with the qualifying broker at

the time the transaction went under contract; the qualifying broker may also disburse or authorize the disbursement of such commissions and fees to any entity entitled by law to receive same, including the estate of a deceased broker, a partnership, corporation, or limited liability company wholly owned by an associate broker and their spouse; such partnership, corporation, or limited liability company shall not be required to have a qualifying broker for purposes of this sub-part;

I. assure that when the brokerage cooperates with or makes a referral to, or receives a referral from any broker, there be a transaction specific written co-brokerage or referral agreement signed by the qualifying broker;

J. designate a broker in charge in the event actual supervision by the qualifying broker is not possible, and inform the commission of such designation; during this period of time, the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage;

K. return the associate broker's license to the commission within 48 hours of termination or discharge;

L. ensure that each qualifying broker and associate broker affiliated with the brokerage obtain and maintain a current errors and omissions insurance policy as provided in NMSA 1978 Section 61-29-4.2 of the real estate license law and 16.61.5 NMAC of the commission rules;

M. successfully complete as a condition of license renewal or as a condition of reinstatement of qualifying broker status the commission-approved four hour qualifying broker refresher course;

N. ensure that associate broker's affiliated with their brokerage complete the commission-approved new broker business practice course within their first year of licensure.

[16.61.16.9 NMAC - Rp, 16.61.16.9 NMAC, 1-1-2012]

HISTORY OF 16.61.16 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under:

Real Estate License Law Manual, filed 10-2-73;

(REC-3) Rule No. 3 Amendment No. 3, Salesperson-Employment; Place of Business; Records to be Maintained, filed 6-15-79;

REC 70-3, Associate Broker/Salesperson-Affiliation; Place of Business; Records to be Maintained, filed 10-6-81;

REC 71-3, Associate Broker/Salesperson-Affiliation; Place of Business; Records to be Maintained, filed 11-29-82;

Rule No. 5, Qualifying Broker/Associate

Broker/ Salesperson-Affiliation and Responsibilities, filed 12-18-87.

History of Repealed Material:

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 6-25-97) repealed 1-1-2000.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 12-10-99) repealed 1-1-2002.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 11-30-01) repealed 1-1-2012.

Other History:

That portion of Rule No. 5, Qualifying Broker/Associate Broker/ Salesperson-Affiliation and Responsibilities (filed 12-18-87) was reformatted, renumbered, and replaced by 16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities, effective 8-15-97.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 6-25-97), replaced by 16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities, effective 1-1-2000.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 12-10-99), was reformatted, renumbered, and replaced by 16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities, effective 1-1-2002.

16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities (filed 11-30-01), replaced by 16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities, effective 1-1-2012.

NEW MEXICO REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS PART 23 TRUST ACCOUNTS

16.61.23.1 ISSUING AGENCY: New Mexico Real Estate Commission. [16.61.23.1 NMAC - Rp, 16.61.23.1 NMAC, 1-1-2012]

16.61.23.2 SCOPE: The provisions in Part 23 of Chapter 61 apply to all licensed qualifying brokers in New Mexico. [16.61.23.2 NMAC - Rp, 16.61.23.2 NMAC, 1-1-2012]

16.61.23.3 STATUTORY AUTHORITY: Part 23 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4. [16.61.23.3 NMAC - Rp, 16.61.23.3 NMAC,

1-1-2012]

16.61.23.4 D U R A T I O N :
Permanent.
[16.61.23.4 NMAC - Rp, 16.61.23.4 NMAC, 1-1-2012]

16.61.23.5 EFFECTIVE DATE:
1-1-2012, unless a later date is cited at the end of a section.
[16.61.23.5 NMAC - Rp, 16.61.23.5 NMAC 1-1-2012]

16.61.23.6 OBJECTIVE: The objective of Part 23 of Chapter 61 is to set forth the requirements and procedures for the description, establishment, maintenance, retention of, and deposits to and disbursement from, trust accounts by qualifying brokers.
[16.61.23.6 NMAC - Rp, 16.61.23.6 NMAC, 1-1-2012]

16.61.23.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.23.7 NMAC - Rp, 16.61.23.7 NMAC, 1-1-2012]

16.61.23.8 DESCRIPTION, DESIGNATION AND RECONCILIATION:

A. Funds of others. A qualifying broker who receives money belonging to others related to a real estate transaction shall deposit same only in a trust account in an acceptable financial institution, title company or with a qualifying broker also involved in the transaction.

B. Designation. All trust accounts shall be designated on the institution's records as "trust account" and include the trade name of the brokerage as registered with the commission.

C. Electronic transactions. Online payments, direct deposits and other electronic transactions are permitted as long as each transaction can be tracked on the bank statement and on the property ledger.

D. Reconciliation. Trust accounts must be reconciled monthly.

E. Property ledgers. Each trust account transaction shall be assigned to a managed property (e.g. single family home, apartment complex or commercial property).

F. Number of trust accounts. A brokerage may have more than one trust account.
[16.61.23.8 NMAC - Rp, 16.61.23.8 NMAC, 1-1-2012]

16.61.23.9 TYPES OF TRUST ACCOUNTS: A qualifying broker shall have only the following types of accounts and they shall be used only for the purposes stated.

A. Brokerage trust account. This account shall be used for money

belonging to others related to a real estate sales transaction. Property management funds may not be placed in this trust account. In lieu of a brokerage trust account, a broker may deposit funds with a title company authorized to do business in the state of New Mexico. If a title company is used in lieu of a brokerage trust account, then receipt and deposit records shall be kept as outlined in this section.

B. Property management trust account. This account shall be used for money belonging to others received by a qualifying broker related to managing properties for others. All management commissions and fees may be deposited, withdrawn and tracked through the property management trust account as long as those commissions and fees are specified in the management agreement.

C. Special trust account. In the event the principals agree in writing that an interest bearing special trust account is to be established, a written agreement shall be prepared stating as a minimum the following:

(1) the qualifying broker shall be named as sole trustee;

(2) name of the acceptable financial institution wherein the funds are to be deposited;

(3) the amount of interest to be paid on the funds and to whom the interest shall accrue;

(4) the final disposition of principal and interest upon closing, termination or default by either party to the transaction; and

(5) the signatures of all parties to the transaction and the qualifying broker as trustee.

D. Custodial account. Funds designated to be deposited in a custodial account shall first be placed in a brokerage trust account or a property management trust account of the qualifying broker and then may be transferred to the custodial account of the owner. Custodial accounts shall not contain any funds other than those belonging to the owner of the custodial account. Custodial accounts may be interest bearing; however, the interest shall be paid only to the owner or his designee. The qualifying broker shall have on file a written agreement signed by all principals as to the establishment and operational details of each custodial account.
[16.61.23.9 NMAC - Rp, 16.61.23.8 & 9 NMAC, 1-1-2012]

16.61.23.10 R E C O R D ACCESSIBILITY, RETENTION AND INSPECTION: Every qualifying broker shall keep bank and office records of all funds related to all trust accounts, as set forth below.

A. Accessibility. Records shall be maintained at or accessible from

the brokerage office as registered with the commission.

B. Retention. All trust account records shall be retained for six years after the completion of a transaction.

C. Property management. All trust account records shall be retained for the previous six years during a management agreement. At the termination of a management agreement, records shall be retained for six years from the date of termination.

D. Inspection. All financial documents shall be subject to inspection by the commission or its duly authorized representative at the designated location of such records or at the offices of the commission. The records shall include, at a minimum, clear indication of all funds received and disbursed on behalf of others in all real estate transactions wherein the qualifying broker is involved.

E. The qualifying broker is responsible for the maintenance and safekeeping of all trust account records.
[16.61.23.10 NMAC - Rp, 16.61.23.9 NMAC, 1-1-2012]

16.61.23.11 D E P O S I T S , DISBURSEMENTS AND COMMINGLING:

A. Deposits. All trust account deposits shall conform to the following requirements.

(1) Timeliness. All funds of others pertaining to a real estate transaction shall be deposited into the proper trust account per written agreement of the parties to the transaction.

(2) Receipt records. A detailed record of all funds received shall be maintained by the qualifying broker and shall clearly indicate the following:

(a) date received;

(b) date deposited;

(c) from whom received;

(d) amount of deposit;

(e) property address or legal description including unit number (if unit number is applicable); and

(f) category or purpose of receipt (e.g., earnest money, rent, security deposit, funds from owner, etc.).

(3) Wrongful deposits. The following actions involving any trust account shall be improper and shall constitute commingling:

(a) depositing a broker's own funds into a trust account without disclosure to the owner of a managed property;

(b) depositing funds in a trust account that are not directly related to a real estate transaction or a managed property; and

(c) depositing funds of others in an account that is not a properly designated trust account.

B. Disbursements. All trust account disbursements shall conform to the following requirements.

(1) Timeliness. All funds of others pertaining to a real estate transaction shall be disbursed as soon as reasonably possible after the conclusion of a transaction.

(2) Disbursement records. A detailed record of all funds disbursed shall be maintained by the qualifying broker and shall clearly indicate the following:

(a) check number or unique transaction identification number;

(b) date of disbursement;

(c) payee;

(d) category or purpose of disbursement;

(e) amount of disbursement;

(f) property address or legal description including unit number (if unit number is applicable).

(3) Fees due broker. Fees as determined by written agreement may be disbursed as soon as the basis for calculation can be determined and funds are available.

(4) Wrongful disbursements. The following actions involving any trust account shall be improper and shall constitute commingling:

(a) disbursing trust funds for personal use of the qualifying broker or the broker's designee;

(b) disbursing commission or commission splits from any trust account to any entity other than the qualifying broker.

(c) disbursing New Mexico gross receipts tax or other non-property related business expenses directly from a trust account;

(d) disbursing funds before the completion of the related transaction, except upon court order; this provision does not prevent a broker from transferring funds from one properly designated trust account to another properly designated trust account within the same brokerage;

(e) disbursing funds in excess of the trust account balance or in excess of a specific property or client ledger balance; and

(f) trust account overages can only be disbursed in accordance with the Unclaimed Property Act with written notification to the commission.

C. Commingling. Commingling of trust account funds is not permitted. Commingling shall include, but is not limited to, the following actions:

(1) wrongful deposits as described in this section;

(2) wrongful disbursements as described in this section;

(3) allowing a property or client ledger within a trust account to be in deficit;

(4) placing funds derived from the management of the qualifying broker's personally owned properties in a trust

account containing funds of others;

(5) failing to withdraw from the trust account within a reasonable time, funds to which the qualifying broker is entitled;

(6) allowing money designated to one property or transaction to be used for the benefit of another property or transaction.

D. Exceptions to commingling. The following are exceptions.

(1) Non-trust funds may be placed in a trust account in an amount not to exceed the required minimum balance requirements of a financial institution necessary to maintain the account and avoid charges.

(2) Non-trust funds may be placed in a trust account in order to pay fees for credit card transactions and bank fees.

(3) Depositing broker's own funds in a trust account with full disclosure to the owner of a managed property.

(4) If a written sharing agreement specifies, funds of one property may be used for the benefit of another property owned by the same person or entity.

(5) Funds received from an owner for the benefit of all their managed properties may be credited to an owner's ledger.

[16.61.23.11 NMAC - Rp, 16.61.23.10 NMAC, 1-1-2012]

HISTORY OF 16.61.23 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

Real Estate License Law Manual, filed 10-2-73;

Rule No. 15 Amendment No. 1, Trust Fund Accounts; Records to be Maintained, filed 6-15-79;

REC 70-14 Trust Fund Accounts; Records to be Maintained, filed 10-6-81;

REC 84-14, Trust Fund Accounts; Records to be Maintained, filed 10-25-84;

Rule No. 11 Trust Accounts, filed 12-18-87.

History of Repealed Material:

16.61.23 NMAC, Special Trust Accounts, Custodial Accounts, and Other Accounts Containing Funds of Third Parties (filed 11-30-2001) repealed 1-1-2012.

Other History:

Rule No. 11 Trust Accounts (filed 12-18-87) was reformatted, renumbered, amended, and replaced by 16 NMAC 61.23, Trust Accounts, effective 8-15-97.

16 NMAC 61.23, Trust Accounts (filed 6-25-97) was reformatted, amended, renumbered, and replaced by 16.61.23 NMAC, Trust Accounts, effective 1-1-2002.

16.61.23 NMAC, Special Trust Accounts, Custodial Accounts, and Other Accounts Containing Funds of Third Parties (filed 11-30-2001) was replaced by 16.61.23 NMAC, Trust Accounts, effective 1-1-2012.

NEW MEXICO REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS PART 24 PROPERTY MANAGEMENT

16.61.24.1 ISSUING AGENCY: New Mexico Real Estate Commission.

[16.61.24.1 NMAC - Rp, 16.61.24.1 NMAC, 1-1-2012]

16.61.24.2 SCOPE: The provisions in Part 24 of Chapter 61 apply to all licensed New Mexico associate brokers and qualifying brokers engaged in property management.

[16.61.24.2 NMAC - Rp, 16.61.24.2 NMAC, 1-1-2012]

16.61.24.3 STATUTORY AUTHORITY: Part 24 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.24.3 NMAC - Rp, 16.61.24.3 NMAC, 1-1-2012]

16.61.24.4 DURATION: Permanent.

[16.61.24.4 NMAC - Rp, 16.61.24.4 NMAC, 1-1-2012]

16.61.24.5 EFFECTIVE DATE: 1-1-2012, unless a later date is cited at the end of a section.

[16.61.24.5 NMAC - Rp, 16.61.24.5 NMAC, 1-1-2012]

16.61.24.6 OBJECTIVE: The objective of Part 24 of Chapter 61 is to establish the requirements, policies and procedures that must be met by a New Mexico real estate associate broker or qualifying broker engaged in property management for others.

[16.61.24.6 NMAC - Rp, 16.61.24.6 NMAC, 1-1-2012]

16.61.24.7 DEFINITIONS: Refer to Definitions 16.61.1.7 NMAC.

[16.61.24.7 NMAC - Rp, 16.61.24.7 NMAC, 1-1-2012]

16.61.24.8 PROPERTY MANAGEMENT ADVISORY COMMITTEE:

The commission may appoint a property management advisory committee (PMAC) with the goal of enhancing the professional competence of property managers and reducing violations and complaints about property management services.

[16.61.24.8 NMAC - N, 1-1-2012]

16.61.24.9 DECLARATION OF

INTENT: At the time of initial licensure or renewal, brokers and associate brokers shall declare intent to offer property management services for others.

[16.61.24.9 NMAC - N, 1-1-2012]

16.61.24.10 COMPLIANCE WITH APPLICABLE LAW:

Brokers shall comply with applicable local, state and federal laws and ordinances concerning managing and leasing property for others, including but not limited to the New Mexico Uniform Owner Resident Relations Act, section 47-8-1 through 47-8-52 NMSA 1978.

[16.61.24.10 NMAC - N, 1-1-2012]

16.61.24.11 PROPERTY MANAGEMENT TRUST ACCOUNT:

In addition to the rules set forth in 16.61.23 NMAC, the following also apply to property management trust accounts.

A. This account shall only contain funds derived from the management of property for others.

B. All funds received by the qualifying broker shall be deposited into the property management trust account prior to any disbursements. Once deposited, the qualifying broker may then disburse funds as specified in the management agreement.

C. Deposits from tenants shall be placed in a property management trust account. Deposits may be held in a property management trust account or may be disbursed to the owner as specified in the property management agreement and agreed to by the tenant.

D. Commingling of funds is not permitted. No funds may be deposited in a property management trust account that are not received in connection with a managed property except as provided for in 16.61.23 NMAC (Exceptions to commingling).

E. Property ledgers. When the property management trust account contains funds from the rental or lease of more than one property, separate accounting records shall be maintained on each property. [16.61.24.11 NMAC - Rp, 16.61.24.8 NMAC, 1-1-2012]

16.61.24.12 REPORTS AND DOCUMENTS TO OWNERS:

A. Owner statements. The qualifying broker shall provide the owner with a report of receipts and disbursements monthly or as required by the management agreement, showing the following:

- (1) previous balance;
- (2) funds deposited by category;
- (3) funds disbursed by category;

and

- (4) ending balance.

B. Additional reports may be provided as set forth in the property management agreement.

C. Documents. Fully executed copies of the management agreement shall be provided to the owner after obtaining all signatures. Signed leases shall be provided to owner upon request.

D. Final statement after termination. Final accounting of trust account funds shall be provided to the owner within 60 days of the effective date of termination of a management agreement.

[16.61.24.12 NMAC - Rp, 16.61.24.12 NMAC, 1-1-2012]

16.61.24.13 MANAGEMENT AGREEMENTS:

A. There shall be a signed written management agreement between the brokerage and the owner for each property managed. The agreement shall be executed prior to acting on behalf of the owner and shall specify the brokerage relationship.

B. The agreement shall define the duties and responsibilities of the brokerage and the owner including, but not limited to, the following:

(1) duties to be provided by the brokerage;

(2) disclosure of all fees to be charged to owner; and

(3) disclosure of all fees to be charged to tenant that are retained by the brokerage.

[16.61.24.13 NMAC - Rp, 16.61.24.13 NMAC, 1-1-2012]

16.61.24.14 TENANCY AGREEMENTS:

There shall be a signed written tenancy agreement for each property or rental unit. Tenancy agreements shall include, but not limited to, the following:

A. name of tenant;

B. property address or legal description including unit number (if unit number is applicable);

C. rent amount;

D. security deposit and other deposit amounts;

E. when and where rent is to be paid;

F. date possession began;

G. date possession ends;

H. all fees charged tenant;

and

I. how payments are to be applied to outstanding charges.

[16.61.24.14 NMAC - Rp, 16.61.24.14 NMAC, 1-1-2012]

16.61.24.15 RECORD ACCESSIBILITY, RETENTION AND INSPECTION:

The property management brokerage shall maintain office records of all properties managed for others.

A. Accessibility. Records

shall be maintained at or accessible from the brokerage office at the location as registered with the commission.

B. Retention. All property management records shall be retained for the previous six years during a management agreement. At the termination of a management agreement, records shall be retained for six years from the date of termination.

C. Inspection. All records are subject to inspection by the commission or its duly appointed representative at or accessible from the brokerage office or at the offices of the commission.

D. The qualifying broker is responsible for the maintenance and safe-keeping of all property management records. [16.61.24.15 NMAC - Rp, 16.61.24.15 NMAC, 1-1-2012]

16.61.24.16 SHORT TERM AND VACATION RENTALS.

In addition to the provisions set forth above, the following special provisions apply only with respect to the management of short term and vacation rentals.

A. Management agreement to authorize collection of New Mexico gross receipts tax and lodger's tax from tenant. Broker to report and pay gross receipts tax and lodger's tax due on all receipts derived from reservations in accordance with New Mexico law.

B. Tenancy agreement shall also include the following:

(1) arrival and departure dates;

(2) check-in and check-out times;

(3) nightly rental rate;

(4) rental deposit;

(5) security deposit;

(6) disclosure of all fees charged to tenant (e.g. cleaning, hot tub, phone, cable internet, resort, etc.);

(7) accommodation rules (e.g. occupancy, parking, smoking, pets, noise, etc.); and

(8) cancellation policy.

C. Reports to owners. In the monthly statement to the owner, qualifying broker shall also list rental income, credit card fees, maintenance charges and amount paid in commission to the brokerage office.

D. Tenant security deposits. Funds collected as a tenant security deposit shall be deposited into the property management trust account.

E. Tenant rental deposits. Funds collected as a tenant rental deposit shall be deposited into the property management trust account to secure a reservation.

F. Employees of the brokerage handling short term or vacation rentals or third parties who engage only in taking reservations for short term or vacation rentals shall not be required to be licensed.

[16.61.24.16 NMAC - Rp, 16.61.24.16

NMAC, 1-1-2012]

HISTORY OF 16.61.24 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under:

REC 71-17 Property Management, filed 11-29-82;

REC 84-17 Property Management, filed 10-25-84;

Rule No. 15, Property Management, filed 12-18-87;

NMREC Rule 15, Property Management filed 10-3-94.

History of Repealed Material:

16.61.24 NMAC, Property Management (filed 11-30-2001) repealed 1-1-2012.

Other History:

NMREC Rule 15, Property Management (filed 10-3-94) was reformatted, renumbered, amended, and replaced by 16 NMAC 61.24, Property Management, effective 8-15-97.

16 NMAC 61.24, Property Management (filed 6-25-97) was reformatted, amended, renumbered, and replaced by 16.61.24 NMAC, Property Management, effective 1-1-2002.

16.61.24 NMAC, Property Management (filed 11-30-01) was replaced by 16.61.24 NMAC, Property Management, effective 1-1-2012.

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.2 NMAC, Section 8, effective 1-1-2012.

16.61.2.8 FEES:

A. For each examination, a fee not to exceed ninety-five dollars (\$95.00).

B. For each broker's license issued, and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270.00).

C. For each license transferred, a fee not to exceed twenty dollars (\$20.00). If there are eleven or more affected licenses in the brokerage, the total transfer fee paid shall not exceed two hundred dollars (\$200.00).

D. For each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars (\$20.00).

E. For each license history, a fee not to exceed twenty-five dollars (\$25.00).

F. For copying of documents by the commission a fee not to exceed one dollar (\$1.00) per copy.

G. For each state of New Mexico real estate license law and rules manual a fee not to exceed ten dollars (\$10.00).

H. For each hard copy or electronic list of licensed real estate brokers, a fee not to exceed ~~[twenty dollars (\$20.00)]~~ fifty dollars (\$50.00).

I. For each initial broker's license, and for the renewal thereof, a fee not to exceed ten dollars (\$10.00) shall be credited to the real estate recovery fund pursuant to NMSA 1978 Section 61-29-22 if in the commission's judgment the assessment of such fee is necessary to maintain the fund at its statutory minimum level.

J. For each application to the commission to become an approved sponsor of real estate pre-licensing and continuing education courses, a fee not to exceed five hundred dollars (\$500.00) and for each renewal thereof a fee not to exceed five hundred dollars (\$500.00).

K. For each application to the commission to become an approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) per course.

L. For each application to the commission to renew certification as a commission approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed one hundred dollars (\$100.00).

[16.61.2.8 NMAC - Rp, 16 NMAC 61.2.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 1-1-2012]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.8 NMAC, Section 8, effective 1-1-2012.

16.61.8.8 REQUIREMENTS:

~~[A real estate license may be transferred to a new address and be placed under a new qualifying broker at the request of the associate broker, upon payment of a]~~ An associate broker may request that their license be transferred to a new qualifying broker. The transfer is effective on the date that the transfer fee, [completion of a] transfer form, and [return to the commission office of] the current license are received and stamped at the commission office. When an associate broker requests that their license be transferred the qualifying broker or the broker in charge shall within ~~[forty-eight (48)]~~ 48 hours return the license to the commission. ~~[All real estate activity on the part of the associate broker shall cease until the transfer has been completed.]~~ If a license transfer form is not accompanied by a certificate certifying that the associate broker or qualifying broker has current errors and

omissions insurance coverage, the license will not be transferred until the certificate is received in the commission office.

~~[A. A broker changing address must notify the commission of his or her new address within ten (10) days of address change.]~~

~~[B.]~~ A. When a qualifying broker returns his or her own license to the commission for transfer they shall within ~~[forty-eight (48)]~~ 48 hours either mail or deliver to the commission all licenses issued under that license. If the brokerage is to continue operation, an application from a new qualifying broker, along with transfer forms and appropriate fees for each license, shall also be included.

~~[C.]~~ B. RESERVED
[8-15-97; 1-1-2000; 16.61.8.8 NMAC - Rn, 16 NMAC 61.8.8, 1-1-2002; A, 1-1-2006; A 1-1-2012]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.9 NMAC, Sections 7 and 8, effective 1-1-2012. This also amends the part name.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS AND SALESPERSONS PART 9 LICENSE INACTIVATION AND REACTIVATION

16.61.9.7 DEFINITIONS:

[RESERVED] Refer to 16.61.1.7 NMAC.
[8-15-97; 16.61.9.7 NMAC - Rn, 16 NMAC 61.9.7, 1-1-2002; A, 1-1-2012]

16.61.9.8 REQUIREMENTS:

~~[Whenever a broker is no longer transacting business under the trade name and from the address registered with the commission the qualifying broker, or his properly designated "broker in charge", shall return the license to the commission within forty-eight (48) hours. The license shall be inactivated and all real estate activity on the part of the licensee shall cease.]~~

A. When a broker requests that their license be placed on inactive status, the qualifying broker or broker in charge shall within ~~[forty-eight (48)]~~ 48 hours return the license to the commission. The license shall be inactivated and all real estate activity on the part of the broker shall cease.

B. When a qualifying broker returns their license to the commission for inactivation, they shall within ~~[forty-eight (48)]~~ 48 hours either mail or deliver to the commission all licenses issued under that license. If the brokerage is to continue operation, an application for a new qualifying broker, along with transfer

applications and appropriate fees for each license, shall also be included.

C. Inactivation of a license shall take place at the time a license is received and stamped at the commission office. In the event that a license is lost, or otherwise unavailable for delivery by the qualifying broker to the commission office, inactivation of the license will take place at the time the commission receives and stamps a written notification from the qualifying broker that the associate broker [longer] is no longer affiliated with the brokerage. The qualifying broker may pay a commission to an associate broker whose license is on inactive status if the transaction was under contract while the broker was on active status. Payment of the commission is subject to the terms and conditions of the independent contractor agreement between the associate broker and the qualifying broker.

D. The voluntary inactivation of a license will not prevent the commission from taking disciplinary action against that [broker] license as provided in Section 61-29-1 through 61-29-29, NMSA, 1978.

E. Brokers whose licenses are inactive are required to fulfill the following requirements of licensure.

(1) The payment of triennial renewal fees.

(2) [Submission of an arrest record report at the time of renewal] Documentation of having been fingerprinted for purposes of matching with state and national arrest record databases.

(3) Completion of continuing education requirements. [except in the case of exemption from continuing education by virtue of being sixty-five (65) years of age and having had twenty (20) years of continuous licensure.]

(4) During the course of advertising personally owned property for sale, lease, or auction, disclosure that they are a licensed broker.

F. Brokers whose licenses are on inactive status are not required to have an errors and omissions insurance policy in effect while on inactive status. Inactive brokers are required to produce a certificate of current errors and omissions insurance as a condition of license activation.

G. If a license has been placed in inactive status and is not renewed at the time of next renewal, that license shall expire.

[8-15-97; 16.61.9.8 NMAC - Rn & A, 16 NMAC 61.9.8, 1-1-2002; A, 12-31-08; A, 1-1-2012]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.11 NMAC, Section 8, effective 1-1-2012. This also amends the part name.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS PART 11 LICENSE EXPIRATION AND RENEWAL

16.61.11.8 REQUIREMENTS:

Every real estate license ~~[shall expire]~~ expires every three years on the last day of the month following the broker's birth month, ~~[and shall be]~~ unless it is renewed on or before that date. Renewal of a license is the sole responsibility of ~~[the]~~ each broker. A broker whose license has expired may reinstate their license without reexamination up to one year after expiration by paying a reinstatement fee three times the regular license renewal fee. In addition to paying a reinstatement fee, the broker will be required as a condition of reinstatement to provide documentation of the completion of 30 hours of commission-approved continuing education courses. Application for renewal shall be on the renewal form prescribed by the commission. Renewal forms will be mailed to brokers at the last residential mailing address on file at the commission. ~~[The commission assumes no responsibility for renewal applications not received by the broker for any reason. It shall be the broker's responsibility to make a request for a renewal form in the event the form has not been received by the broker. The license(s) of any active broker who fails to submit with the license renewal application a certification of current errors and omissions insurance coverage and an arrest record check not more than six (6) months old shall not be renewed until all documentation is received in the commission office] The broker must notify the commission of a residential address change within 10 days of address change. The qualifying broker may pay a commission to a broker whose license is expired or to the estate of a deceased broker if the transaction was under contract while the broker's license was current.~~

[8-15-97; A, 1-1-2000; 16.61.11.8 NMAC - Rn & A, 16 NMAC 61.11.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.13 NMAC, Sections 8 and 9, effective 1-1-2012.

16.61.13.8 REQUIREMENTS:

~~[The only exception to this part is for brokers exempted from continuing education by virtue of being sixty-five (65) years of age with twenty (20) years continuous licensure] Except for brokers who were exempt from continuing education prior to July 1, 2011.~~

A. All active and inactive associate brokers and qualifying brokers shall successfully complete thirty (30) credit hours of continuing education in courses approved by the commission during each licensing cycle.

B. All associate brokers and qualifying brokers shall successfully complete the approved eight (8) credit hour real estate commission mandatory course during each licensing cycle. Of the remaining twenty-two (22) credit hours, ten (10) credit hours may be credited toward the continuing education requirement from approved training category courses. At least twelve (12) credit hours must be taken from approved education category courses; however, all twenty-two (22) credit hours may be taken from the list of commission-approved continuing education courses.

C. Commission approved pre-licensing courses may count for up to ten (10) credit hours toward continuing education ~~[if the course is being used to upgrade from associate broker to qualifying broker] credit for license renewal.~~ The commission approved thirty (30) hour post-licensing course may also count for up to ten (10) education category credit hours toward continuing education.

D. No commission approved continuing education course in either the education or the training category will be granted more than ten (10) credit hours of continuing education credit.

E. Continuing education credit hours cannot be carried forward to the next licensing cycle.

F. ~~[Brokers may receive four (4) approved education course credit hours during each licensing cycle for attending commission meetings, rules hearings, and disciplinary hearings] The same continuing education course cannot be repeated for credit in a three-year renewal cycle.~~

G. ~~[Approved instructors may use up to ten (10) credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching commission approved courses] Brokers may receive four (4) approved education course credit hours during each licensing cycle for attending commission meetings, rule hearings and disciplinary hearings.~~

H. Approved instructors may use up to ten (10) credit hours during each three-year licensing cycle toward fulfillment of their own continuing education

requirements for teaching commission approved courses. Teaching documentation must be provided by the course sponsor.

I. Classes required by the commission for disciplinary reasons cannot be counted towards the continuing education requirements for license renewal.

[1-1-2000; 16.61.13.8 NMAC - Rn & A, 16 NMAC 61.13.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007; A, 12-31-2008; A, 1-1-2012]

16.61.13.9 VERIFICATION OF COMPLETION OF COURSE WORK:

At the time of license renewal, associate brokers and qualifying brokers shall submit to the real estate commission [~~on commission approved forms, sponsors~~²] verification of completion of continuing education course work.

[1-1-2000; 16.61.13.9 NMAC - Rn, 16 NMAC 61.13.9, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.17 NMAC, Sections 8 and 9, effective 1-1-2012.

16.61.17.8 AFFILIATION:

[~~A qualifying broker may by written employment or independent contractor agreement engage the services of associate brokers or co-qualifying brokers~~] An associate broker must be affiliated with a qualifying broker in order to engage in real estate brokerage business. An associate broker may have only one associate broker's license and be affiliated with only one qualifying broker at a time.

[1-1-2000; 16.61.17.8 NMAC - Rn, 16 NMAC 61.17.8, 1-1-2002; A, 1-1-2006; A, 1-1-2012]

16.61.17.9 RESPONSIBILITIES:

An associate broker shall:

A. complete in the first [~~three year licensing cycle~~] year of licensure, the commission-approved [~~thirty~~(30) hour post-licensing] new broker business practices course;

B. be affiliated with only one qualifying broker at a time;

C. not engage in any real estate activity for any other qualifying broker other than the qualifying broker with whom [~~he/she~~] the broker is affiliated;

D. not engage in any real estate activities for others for which a real estate license is required outside the knowledge and supervision of their qualifying broker;

[~~D~~] E. not engage in any real estate activities [~~for himself/herself~~] outside the knowledge of the qualifying broker with whom [~~he/she~~] the broker is affiliated;

[~~E~~] F. not engage in any real estate activity under a trade name(s) other than the trade name(s) of the qualifying broker with whom [~~he/she~~] the broker is affiliated;

[~~F~~] G. not receive any commissions or fees for real estate activities from anyone other than the qualifying broker with whom [~~he/she is~~] the broker was affiliated with at the time the transaction went under contract, or persons authorized in writing by the qualifying broker to disburse such commissions or fees;

[~~G~~] H. when advertising real estate or real estate services for others, include in the advertising the trade name and telephone number as registered with the commission of the qualifying broker with whom [~~he/she~~] the broker is affiliated;

[~~H~~] I. remit all funds received from others related to real estate transactions to the qualifying broker or their designee as soon as possible after receipt of those funds, and after securing signatures of all parties to the transaction;

[~~I~~] J. [~~maintain all files for transactions performed under the auspices of the qualifying broker with whom he/she is affiliated at the brokerage address as registered with the commission~~] deliver in a timely manner to their qualifying broker all records required to be maintained by their qualifying broker under 16.61.16 NMAC.

[1-1-2000, A, 2-14-2000; 16.61.17.9 NMAC - Rn, 16 NMAC 61.17.9, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.19 NMAC, Sections 8 and 9, effective 1-1-2012. This also amends the part name.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS

PART 19 [ASSOCIATE BROKER AND QUALIFYING BROKER DUTIES, DISCLOSURE, BROKERAGE RELATIONSHIPS AND DUAL AGENCY RELATIONSHIPS] BROKER DUTIES AND BROKERAGE RELATIONSHIPS

16.61.19.8 **BROKER DUTIES; DISCLOSURE:** [~~Prior to~~] Before the time [~~an associate broker or qualifying~~] a broker generates or presents any written document that has the potential to become an express written agreement, the [~~associate broker or qualifying~~] broker shall disclose in writing to their prospective [~~buyer, seller, landlord or tenant, the following list of broker duties that are owed to customers and clients by all brokers~~] customer or client, and obtain

a written acknowledgement from their prospective customer or client, showing the delivery of the disclosure of the following broker duties:

A. honesty and reasonable care as set forth in the provisions of this section;

B. compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules, and other applicable local, state, and federal laws and regulations;

C. performance of any and all [~~oral or~~] written agreements made with the customer or client;

D. assistance to the broker's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including:

(1) presentation of all offers or counter-offers in a timely manner; and

(2) assistance in complying with the terms and conditions of the contract and with the closing of the transaction; if the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of 16.61.19.8 NMAC, the customer or client must agree in writing that the broker is not expected to provide such service, advice or assistance, and the broker shall disclose the existence of such agreement in writing to the other brokers involved in the transaction;

E. acknowledgment by the broker that there may be matters related to the transaction that are outside the associate broker's or qualifying broker's knowledge or expertise and that the associate broker or qualifying broker will suggest that the customer or client seek expert advice on these matters;

F. prompt accounting for all [~~monies~~] money or property received by the broker;

G. [~~prior to the time the associate broker or qualifying broker generates or presents any written document that has the potential to become an express written agreement, written disclosure of~~] disclosure of any potential conflict of interest that the broker has in the transaction including but not limited to:

(1) any written brokerage relationship the broker has with any other parties to the transaction [~~and/or~~] or;

(2) any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;

(3) other brokerage relationship options available in New Mexico;

H. written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction;

adverse material facts requiring disclosure do not include ~~[data from a sex-offender registry or the existence of group homes]~~ any information covered by federal fair housing laws or the New Mexico Human Rights Act;

I. maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former client's consent or is required by law;

J. unless otherwise authorized in writing, an associate broker or qualifying broker shall not disclose to their customer or client during the transaction that their seller client or customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their buyer client or customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of their client or customer for selling or buying property; that their seller client or customer or their buyer client or customer will agree to financing terms other than those offered; or any other information requested in writing by the associate broker's or the qualifying broker's customer or client to remain confidential, unless disclosure is required by law.

[16.61.19.8 NMAC - Rp, 16.61.19.8 NMAC, 1-1-2004; A, 1-30-2004; A, 3-27-2004; A, 1-1-2006; A, 1-1-2006, A, 1-1-2007; A, 12-31-2008; A, 1-1-2012]

16.61.19.9 BROKERAGE RELATIONSHIPS: Brokerages working with consumers either as customers or clients may do so through a variety of brokerage relationships. These relationships include but are not limited to a transaction broker relationship, an exclusive agency relationship or a dual agency relationship [or a transaction broker relationship]. For all regulated real estate transactions, a ~~[buyer, seller, landlord or tenant]~~ customer or client may enter into an express written agreement to become a client of a brokerage without creating an agency relationship, and no agency duties will be imposed.

A. Transaction broker: a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

~~[A.]~~ B. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

~~[B.]~~ C. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as

a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

~~[C. — Transaction broker: the non-fiduciary relationship created by 61-29-2 A 14 NMSA 1978, wherein a brokerage provides real estate services without entering into an agency relationship.]~~

[16.61.19.9 NMAC - Rp, 16.61.19.9 NMAC, 1-1-2004; A, 12-31-2008; A, 1-1-2012]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to the current part name of 16.61.25 NMAC, effective 1-1-2012.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS PART 25 TIME SHARE REGISTRATION

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.27 NMAC, Section 9, effective 1-1-2012.

16.61.27.9 TRANSACTIONS ~~[IN OTHER STATES]~~ INVOLVING FOREIGN BROKERS:

A. A real estate broker currently licensed by another state or licensing jurisdiction other than New Mexico, may engage in real estate activity in New Mexico as a foreign broker provided that he/she enters into a transaction specific written agreement with a New Mexico licensed qualifying broker prior to commencing such real estate activity. The foreign broker shall comply with all New Mexico laws, including but not limited to the real estate license law and real estate commission rules.

B. The New Mexico qualifying broker will have the same responsibilities for the transaction that he/she would have for any other transaction conducted through their brokerage. All funds handled for others in such transactions shall be deposited by the New Mexico qualifying broker in a bank, savings and loan institution, or title company authorized to do business in New Mexico.

C. A New Mexico licensed broker found to have violated another state's license law or rules in the course of acting as a foreign broker in that state may be subject to section 61-29-12 A (12) of the real estate license law which provides that the commission may suspend, revoke, or condition a license if the broker has been the subject of disciplinary action in another state

or jurisdiction.

[8-15-97, A, 1-1-2000, A, 2-14-2000; 16.61.27.9 NMAC - Rn & A, 16 NMAC 61.27.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.29 NMAC, Section 8, effective 1-1-2012.

16.61.29.8 REGISTRATION AND USE OF TRADE NAME:

A. Prior to the use of any trade name for the operation of a brokerage, the qualifying broker shall register such trade name with the commission. A qualifying broker must conduct their real estate brokerage business under a trade name registered with the commission. A qualifying broker wishing to conduct real estate brokerage business under a different trade name must execute a new trade name registration form, provide verification of current errors and omission coverage and pay the required fee with the commission.

B. When a brokerage ceases using a trade name, the qualifying broker shall, within ~~[thirty (30)]~~ 10 days, return the qualifying broker's license and the licenses of all qualifying and associate brokers affiliated with the brokerage to the commission, advise the commission in writing that the trade name is no longer being used, and remove all signs and advertising using the trade name.

C. Use of a trade name in such a fashion as to mislead the public may be grounds for disciplinary action by the commission.

~~D. An associate broker executing a trade name registration form for the purposes of reinstating a qualifying broker status shall be required, as a condition of reinstatement, to provide documentation of having completed the commission-approved minimum four hour qualifying broker refresher course during the current license renewal cycle.~~

[16.61.29.8 NMAC - Rp, 16 NMAC 61.29.8, 1-1-2002; A, 1-1-2006; A, 1-1-2012]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.32 NMAC, Section 8, effective 1-1-2012. This also amends the part name.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS PART 32 REAL ESTATE ADVERTISING ~~[DISCLOSURE]~~

16.61.32.8 ADVERTISEMENTS:

~~A. All real estate advertising shall be a true and factual representation of the property and real estate services being advertised and shall not be presented in such a manner that will confuse or mislead the public.~~

~~[A:]B. Every qualifying broker advertising real property for others for sale, purchase, lease, exchange or rent, including short-term or vacation rentals, or advertising real estate services, shall at a minimum, use in such advertising the trade name and [New Mexico] current brokerage office telephone number as registered with the commission. Directional signs are exempt from these requirements. Additional telephone numbers may be used in such advertising.~~

~~[B:]C. Associate brokers, when advertising real property for others for sale, purchase, lease, exchange or rent, or when advertising real estate services, shall include in the advertisement the trade name and the current telephone number as registered with the commission of the brokerage with which they are affiliated.~~

~~[C:]D. [Every] A broker advertising to [buy], sell, or exchange real property which [is owned or partially owned by that broker] the broker owns or partially owns shall indicate within [the advertisement (including signs)] such advertising, including signs, that the broker owns the real property. Disclosure of such ownership must also be made in the listing contract, purchase agreement, or exchange agreement [that one of the parties is a broker. Disclosures using initials or symbols are not permitted]. If an owner-broker engages a third party broker to list the owner-broker's property, the third party broker is not required to make an owner-broker disclosure in advertising and signs, but such disclosure is required in the listing contract, purchase agreement or exchange agreement. A broker advertising to rent or lease real property which the broker owns or partially owns is not required to disclose such ownership in advertising and signs, but is required to make such disclosure in rental or lease agreements.~~

~~[D:]E. When advertising real property owned by a broker and the telephone number of the brokerage is used in the advertisement, the advertisement must also include the trade name of the brokerage as registered with the commission.~~

~~[E. All real estate advertising shall be a true and factual representation of the property and/or real estate services being advertised. If the qualifications, credentials, staffing or sales history of the brokerage are included in the brokerage's advertising, such information shall be presented in such a manner that will not confuse or mislead the public.]~~

~~F. All advertising must be in compliance with all local, state and~~

~~federal laws and regulations.~~

~~[G. All real estate advertising of real property for others or advertising of real estate services shall be under the direct supervision of the qualifying broker or the broker in charge.]~~

~~[H:]G. These requirements apply to all forms of advertising, including but not limited to print, [audio, and video, including] audio and video recordings, computer presentations, online and electronic media [such as the internet e-mail, virtual office websites, and all broker web sites].~~

~~[N, 1-1-2000; 16.61.32.8 NMAC - Rn, 16 NMAC 61.32.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007; A, 1-1-2012]~~

**NEW MEXICO REGULATION AND LICENSING
DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION**

This is an amendment to 14.7.6 NMAC, Sections 11 and 12, effective January 1, 2012.

14.7.6.11 CHAPTER 3 - CLIMATE ZONES: See this Chapter of the IECC except delete the text of section 301.1 General and replace with the following: the table below in conjunction with Table 301.3(2) shall be used to determine the applicable requirements for Chapters 4 & 5. Locations not in the table below shall use either Table 301.1, Section 301.3, or the building official may designate a climate zone consistent with the elevation, HDD & CDD from the table below for the unlisted location.

[Continued on page 824]

Table 301.2
New Mexico Climate Zones Based on Heating and Cooling Degree Days

<u>City</u>	<u>County</u>	<u>Elev. (feet)</u>	<u>Heating Degree Days (HDD) 65°F</u>	<u>Cooling Degree Days (CDD) 50°F day</u>	<u>Climate Zone</u>
Abiquiu Dam	Rio Arriba	6380	5872		5B
Angel Fire	Colfax	8406	9769	195	7B
Alamogordo	Otero	4350	3053	5309	3B
Albuquerque	Bernalillo	5312	4332	4462	4B
Artesia	Eddy	3380	3366	5374	3B
Aztec Ruins	San Juan	5644	5757		5B
Belen	Valencia	4800	4432	5012	3B
Bernalillo	Sandoval	5052	4782	4138	4B
Bloomfield	San Juan	5456	5490		5B
Bosque del Apache	Socorro	4520	3916	5012	3B
Carlsbad	Eddy	3295	2813	5997	3B
Carrizozo	Lincoln	5438	4234	3631	4B
Cedar Crest	Bernalillo	6581	5703		5B
Chaco Canyon	San Juan	6200	6137		5B
Chama	Rio Arriba	7871	8254		6B
Clayton	Union	5056	5150	3170	4B
Cloudcroft	Otero	8801	7205		6B
Clovis	Curry	4268	4033	4252	4B
Corona	Valencia	6690	5389	3631	4B
Cuba	Sandoval	7035	7122		5B
Deming	Luna	4305	3347	5292	3B
Dulce	Rio Arriba	6793	7979		6B
Eagle Nest	Colfax	8262	9254		7B
Edgewood	Santa Fe	6649	6146		5B
Espanola	Rio Arriba	5643	5641		5B
Farmington	San Juan	5395	5747		5B
Fence Lake	Cibola	7055	6396		5B
Fort Sumner	De Baca	4032	3799	4616	3B
Gallup	McKinley	6465	6207		5B
Glenwood	Catron	4725	3632	4427	4B
Grants	Cibola	6460	6143		5B
Hatch	Dona Ana	4052	3270	5904	3B
Hobbs	Lea	3622	2954	5181	3B
Jemez Springs	Sandoval	6198	5260	2059	4B
Las Cruces	Dona Ana	4000	3223	5904	3B
Las Vegas	San Miguel	6424	5738		5B
Lordsburg	Hidalgo	4250	3213	5210	3B
Los Alamos	Los Alamos	7320	6381		5B
Los Lunas	Valencia	4856	4725	4462	4B
Magdalena	Socorro	6572	5074	2093	4B
Mescalero	Otero	6611	5540		5B
Moriarty	Torrance	6220	4735	3786	4B
Mosquero	Harding	5485	5209	3631	4B
Mountainair	Torrance	6520	5558		5B
Organ	Dona Ana	5245	3215	4919	3B
Placitas	Sandoval	5955	4917	3701	4B

Portales	Roosevelt	4006	3845	4347	4B
Raton	Colfax	6680	6001		5B
Red River	Taos	8671	8742	179	7B
Reserve	Catron	5847	5483		5B
Rio Rancho	Sandoval	5282	4880	3949	4B
Roswell	Chaves	3573	3565	5505	3B
Ruidoso	Lincoln	6920	6309		5B
Sandia Crest	Bernalillo	10680	10034		7B
Sandia Park	Bernalillo	7077	7510		6B
Santa Fe	Santa Fe	7260	6001		5B
Santa Rosa	Guadalupe	4620	3749	4714	3B
Shiprock	San Juan	4892	5475		5B
Silver City	Grant	5895	4438	3975	4B
Socorro	Socorro	4603	3984	5147	3B
Springer	Colfax	5797	5653		5B
Taos	Taos	6967	6827		5B
Taos Ski Valley	Taos	9321	9769		7B
Tatum	Lea	3999	3680	4721	3B
Thoreau	McKinley	7200	5789		5B
Tierra Amarilla	Rio Arriba	7425	7901		6B
Tijeras	Bernalillo	6322	6338		5B
Tohatchi	McKinley	6447	5418		5B
Truth or Consequences	Sierra	4245	3394	5103	3B
Tucumcari	Quay	4096	3767	4429	4B
Tularosa	Otero	4508	3056	5130	3B
Zuni	McKinley	6293	5742		5B

[14.7.6.11 NMAC - Rp, 14.7.6.11 NMAC, 8-1-11; A, 1-1-12]

14.7.6.12 CHAPTER 4 - RESIDENTIAL ENERGY EFFICIENCY. See this Chapter of the IECC except for the following:

A. 401.2 Compliance. Delete the text of this section and replace with the following: projects shall comply with sections 401, 402.4, 403.1, 403.2.2, 403.2 through 403.9, and 404.1 (referred to as the mandatory provisions), and one of the following:

(1) sections 402.1 through 402.3, 402.5, and 403.2.1 (prescriptive); or
(2) specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of this code, such as ResCheck, RemRate, and worksheet trade-off sheets from the New Mexico energy conservation code residential applications manual; or
(3) performance path to compliance;

(a) section 405, simulated performance alternative or;
(b) a home energy rating system (HERS) index of 83 or less in climate zone 3, or a HERS index of 89 or less in climate zones 4-7, confirmed in writing by a ResNet-certified energy rater. Compliance may be demonstrated by use of the ResNet sampling protocols (see chapter 6 of the national standard for home energy ratings).

(4) above code programs see IECC section 102.1.1.

B. 402.4.3 Fireplaces. See this section of the IECC and add the following **exception:** one wood burning masonry fireplace without a gas log igniter per residence is allowed without gasketed doors providing:

(1) the residence being constructed exceeds compliance of this code by 20 percent or better with compliance demonstrated by either section 401.2(2) or (3) with a HERS index of 70, and

(2) the fireplaces have outdoor combustion air supplied directly to the fireboxes.

[14.7.6.12 NMAC - Rp, 14.7.6.12 NMAC, 8-1-11; A, 1-1-12]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 19.15.40 NMAC, Section 24, effective January 01, 2012.

19.15.40.24 STANDARDS. This rule adopts by reference the following standards, as amended herein:

- A. [2006] 2009 national fuel gas code, referred to as NFPA54;
- B. [2008] 2011 liquefied petroleum gas code, referred to as NFPA 58;
- C. 2008 guide for fire and explosion investigations, referred to as NFPA 921;

D. [1999] 2011 standard on recreational vehicles, referred to as NFPA 1192;

~~[E. 1999 liquefied natural gas vehicular fuel systems code, referred to as NFPA 57; and]~~

~~[F.] E.~~ [1998 compressed natural gas vehicular] 2010 vehicle gaseous fuel systems code, referred to as NFPA 52. [19.15.40.24 NMAC - N, 11/25/08; A, 7-1-09; A, 1-1-12]

NEW MEXICO RENEWABLE ENERGY TRANSMISSION AUTHORITY

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 8 R E N E W A B L E ENERGY PART 2 SELECTION OF AND PARTICIPATION IN PROJECTS

17.8.2.1 ISSUING AGENCY:
New Mexico Renewable Energy
Transmission Authority ("RETA" or the
"Authority").
[17.8.2.1 NMAC - N, 12/15/2011]

17.8.2.2 SCOPE: This rule
applies to all renewable energy transmission-
related projects submitted to the New Mexico
renewable energy transmission authority
("authority") seeking the authority's
participation in the project.
[17.8.2.2 NMAC - N, 12/15/2011]

**17.8.2.3 S T A T U T O R Y
AUTHORITY:** NMSA 1978, Section 62-
16A-1 *et seq.*, as amended.
[17.8.2.3 NMAC - N, 12/15/2011]

17.8.2.4 D U R A T I O N :
Permanent.
[17.8.2.4 NMAC - N, 12/15/2011]

17.8.2.5 EFFECTIVE DATE:
December 15, 2011, unless a later date is
cited at the end of a section.
[17.8.2.5 NMAC - N, 12/15/2011]

17.8.2.6 OBJECTIVE: This
rule sets forth the criteria by which the
authority may consider undertaking a
renewable energy related project as defined
by NMSA 1978, Section 62-16A-2. The rule
also articulates the authority's participation
in those projects.
[17.8.2.6 NMAC - N, 12/15/2011]

17.8.2.7 DEFINITIONS:
A. "Act" means the New
Mexico Renewable Energy Transmission
Authority Act, NMSA, 1978, Chapter 62,

Article 16A, as amended.

B. "Acquire" or
"acquisition" means to obtain eligible
facilities by lease, construction,
reconstruction or purchase, whether directly
by the authority or by an entity in which
the authority has a majority ownership
interest. The authority may lease, construct,
reconstruct or purchase eligible facilities
through an agent when doing so is consistent
with the act. If at any time after acquisition,
the authority sells, leases or otherwise
relinquishes its ownership interested in
the eligible facilities, the authority will
nevertheless be deemed to have acquired the
eligible facilities.

C. "Authority" means the
New Mexico renewable energy transmission
authority.

D. "Board" means the
appointed members of the authority.

E. "Electric service
reliability" means the continuity of electric
service experienced by retail customers. A
project or facility will not be considered to
affect electric service reliability if it does
not materially diminishes electric service
reliability of the transmission system in New
Mexico.

F. "Letter of support"
means a letter issued by the authority in
order to assist the developer in attracting
financial or other support for the project.

G. "Memorandum of
understanding" or "MOU" means a
written agreement entered into between the
authority and an applicant for the purpose of
informing the public of RETA's involvement
in a project; allowing a greater exchange of
information; implying a financial or project
development commitment between the two;
or for any other reason the board deems
appropriate.

H. "Participation" means
involvement of any kind by the authority
in a project, including, but not limited to,
planning, acquiring, financing, developing,
managing, operating, consulting, cooperating
or otherwise taking part in a project, which
has been approved by the authority.

I. "Partnership" means
the authority's affiliation with a person
for the purpose of RETA participation in a
project.

J. "Person" means a
federal, state or local public entity, a public
utility, or a private entity or individual.

K. "Project committee"
means the subcommittee of the board
established to review projects.
[17.8.2.7 NMAC - N, 12/15/2011]

17.8.2.8 R E T A PARTICIPATION IN PROJECTS:

A. General:
(1) The board may, in its sole
discretion, choose to provide support for

a project based on evaluation criteria set
forth in this rule, as further described in
policies adopted by the board. The type and
amount or degree of support provided by
the authority will generally depend on the
request of an applicant, the evaluation of
the project based on the criteria, and RETA's
resource capacity to support the project.

(2) The authority may decline to
participate in any project, or may participate
in any project through a letter of support;
an MOU; a joint development agreement;
financing of a project in whole or in part;
entering into a partnership or limited
liability company agreement with a person;
or acquisition of a project.

B. Evaluation criteria:

(1) The evaluation of a project
will be consistent with the type of request
being made and may include, to the
extent applicable, an evaluation of project
feasibility, administrative capacity, financial
position, benefit to the state of New Mexico,
and economic and demographic factors.
The authority may use one or more of
these criteria during the evaluation process;
depending on the type of request being
considered. Further detail regarding the
basis for RETA's evaluation of a project may
be issued by the board in a policy.

(2) In accordance with NMSA
1978, Section 62-16A-4(F), the authority
shall not own or control facilities unless:

(a) the facilities are leased to or
help for lease or sale to a public utility or
such other person approved by the public
regulation commission;

(b) the operation, maintenance and
use of the facilities are vested by lease or
other contract in a public utility or such other
person approved by the public regulation
commission;

(c) the facilities are owned or
controlled for a period of not more than
180 days after termination of a lease or
contract described in Paragraph (1) or (2)
of this subsection or after the authority
gains possession of the facilities following a
breach of such lease or contract or as a result
of bankruptcy proceedings; or

(d) the facilities do not affect in-
state retail rates or electric service reliability.

**C. Evaluation by RETA
projects committee:** Employees of the
authority will make a best effort to evaluate
applications and compile a recommendation
for the projects committee within 60 days
of a request made pursuant to this rule. A
project shall not proceed to the board for
consideration unless the committee has
evaluated it and recommended consideration
by the full board. The committee may,
in its sole discretion, request additional
information from an applicant prior to
making a recommendation to the full board.
A project shall not be presented to the full
board if the committee has denied the request

or has not yet completed a full review.
[17.8.2.8 NMAC - N, 12/15/2011]

17.8.2.9 CONFIDENTIALITY:

A. All information obtained by the authority that is proprietary technical or business information shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act (NMSA 1978, Section 14-2-4). Proprietary confidential information includes, but is not limited to, power purchase agreements, interconnection agreements, construction contracts, equipment supply or procurement agreements, operation and maintenance agreements, real property related agreements, financing agreements (including security, pledge and mortgage agreements), costs of production, costs of transmission, transmission service agreements, credit reviews, detailed power models and financing statements.

B. The authority may enter into confidentiality agreements as necessary consistent with the Inspection of Public Records Act and the act.
[17.8.2.9 NMAC - N, 12/15/2011]

17.8.2.10 FILING RULES:

Each rule, amendment, or repeal thereof adopted by the authority shall be filed with the state records center in accordance with NMSA 1978, Section 14-4-3 and published in the New Mexico register in accordance with NMSA 1978, Section 14-4-7.1.
[17.8.2.10 NMAC - N, 12/15/2011]

HISTORY OF 17.8.2 NMAC: [RESERVED]

**NEW MEXICO
RENEWABLE ENERGY
TRANSMISSION
AUTHORITY**

**TITLE 17 PUBLIC UTILITIES
AND UTILITY SERVICES
CHAPTER 8 R E N E W A B L E
ENERGY
PART 3 EMINENT DOMAIN**

17.8.3.1 ISSUING AGENCY:

New Mexico Renewable Energy Transmission Authority (“Authority”).
[17.8.3.1 NMAC - N, 12/15/2011]

17.8.3.2 SCOPE:

This rule applies to the authority’s exercise of the authority’s power of eminent domain for acquiring property or interests in property for projects the authority has determined are eligible facilities, as that term is defined in NMSA 1978, Section 62-16A-2, and for which the authority has determined to participate in the project, but in circumstances in which the authority is

not acquiring the project. In exercising any authority provided for herein, the authority shall act in accordance with all applicable laws.

[17.8.3.2 NMAC - N, 12/15/2011]

17.8.3.3 STATUTORY AUTHORITY:

NMSA, 1978, Sections 42A-1-1 *et seq.*, and 62-16A-1 *et seq.*
[17.8.3.3 NMAC - N, 12/15/2011]

17.8.3.4 DURATION:

Permanent.
[17.8.3.4 NMAC - N, 12/15/2011]

17.8.3.5 EFFECTIVE DATE:

December 15, 2011, unless a later date is cited at the end of a section.
[17.8.3.5 NMAC - N, 12/15/2011]

17.8.3.6 OBJECTIVE:

The purpose of this rule is to specify the objective standards and procedures the authority will follow in considering applications for exercise of its power of eminent domain, the negotiation procedures required of persons submitting applications with landowners and those claiming an interest in property, the contents of applications, condemnation procedures, and related matters.
[17.8.3.6 NMAC - N, 12/15/2011]

17.8.3.7 DEFINITIONS:

In addition to the definitions in NMSA 1978, Sections 62-16A-2, 42A-1-2, , as used in this rule:

A. “Agreement” means a project ownership and property agreement as described in this rule and includes the applicant and the authority’s understanding regarding the authority’s participation in the project, project ownership, project financing, project management, and any other matter required by the authority. The parameters of the authority’s exercise of its eminent domain powers shall be set forth in the agreement.

B. “Authority” means the renewable energy transmission authority.

C. “Applicant” means any person that submits an application to the authority pursuant to this rule and in the manner set forth herein. Applications will only be considered if the authority has already agreed to participate in the project.

D. “Eligible facilities” means facilities to be financed or acquired by the authority, in which, within one year after beginning the transmission or storage of any electricity, and thereafter, at least 30 percent of the electric energy, as estimated by the authority, originates from renewable energy sources.

E. “Eminent domain code” means the statutory provisions governing condemnation in New Mexico, NMSA 1978, Section 42A-1-1 *et seq.*, as

modified from time to time.

F. “Person” includes a natural individual, partnership, corporation, association other legal or fiduciary entity and a governmental entity.

G. “Project” means, for the purposes of this rule, an undertaking by the authority to finance or plan, acquire, maintain and operate eligible facilities located in part or in whole within the state of New Mexico in which the authority has agreed to participate.

H. “Property” means real property under the laws of the New Mexico, and may include one or more individual parcels of land or a portion or portions thereof, any improvements thereon or connected therewith or any easement or other interest therein.

I. “Property owner(s)” means any person or entity having an ownership interest in the property.
[17.8.3.7 NMAC - N, 12/15/2011]

17.8.3.8 PROJECT OWNERSHIP AND PROPERTY AGREEMENT:

A. The applicant may apply to the authority for approval of an agreement and exercise of the authority’s eminent domain powers for the purpose of property acquisition, condemnation, property management, property disposition, and related matters. The parameters of the authority’s exercise of its eminent domain powers shall be set forth in the agreement.

B. Contents of application: The applicant must file with the authority an application, which shall contain:

(1) a description of the project, including:

(a) identification of all applicants and other persons with a financial interest in the project;

(b) a description of the project and its purpose(s);

(c) a description of the proposed project route in New Mexico, including a map showing the route in New Mexico;

(d) a description of the property on the proposed project route that the applicant does not have an interest in; and

(e) a description of the scope of work for the project and the projected timeline for completion of the work;

(2) a copy of the draft agreement(s) proposed for approval;

(3) copies of memorandum of understanding (MOU) or prior agreements, if any, regarding the authority’s support for or participation in the project;

(4) a statement explaining why the property comprising the proposed route in New Mexico is necessary for the project;

(5) copies of any reviews of the proposed project under the National

Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.* (NEPA), or other similar reviews;

(6) evidence that the applicant has made reasonable and diligent efforts to acquire the property by negotiation, including by offering at least fair market value for the property;

(7) a statement verifying, under oath, that the proposed exercise of eminent domain authority does not involve taking any utility-owned property;

(8) a copy of a determination by the New Mexico public regulation commission that the proposed project will not materially diminish electric service reliability of the transmission system in New Mexico, if issued;

(9) a form of draft publication of the notice in compliance with Subsection C of 17.8.3.8 NMAC;

(10) any other information or exhibits the applicant wishes to submit in support of the application.

C. Any information contained in the application which the applicant believes is exempt from disclosure pursuant to the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978) or the New Mexico Renewable Energy Transmission Authority Act (Chapter 6, Article 16A NMSA 1978) must be clearly marked in the application and, if feasible, separated from the remainder of the application.

D. Notice and comment on application:

(1) Notice.

(a) At the same time the application is submitted to the authority, the applicant shall provide a copy of the application to private property owner(s) of record of the properties that lie within the proposed project route in New Mexico, in the same manner as provided in Subsection B of 17.8.3.8 NMAC.

(b) The authority shall cause notice of the application to be published in a newspaper of general circulation available in every county in which the property within the proposed project route in New Mexico lies. The notice shall not include any information from the application that is exempt from disclosure pursuant to the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978) or the New Mexico Renewable Energy Transmission Authority Act (Chapter 6, Article 62A NMSA 1978). Upon request by the authority, the applicant shall publish notice in accordance with this rule.

(c) Such published notice shall appear at least three times a minimum of seven days apart, with the first occurrence published within 14 days after the date of the authority's approving the form of notice and at least 30 days prior to the date of the authority board meeting at which the

application will be considered.

(d) The notice shall contain the following information:

(i) identification of the applicant(s);

(ii) a description of the project and its purpose;

(iii) a description of the proposed project route in New Mexico and a statement that a map is available at RETA's offices;

(iv) a statement that the applicant has applied to the authority for approval of the agreement and exercise of its eminent domain authority pursuant to this rule;

(v) the date, time and place of the authority meeting at which the authority may consider the application, if known, together with the further statement that interested persons should contact the authority for confirmation of the meeting date, time, and place;

(vi) a statement that any interested person may examine the application and related exhibits, except such information exempt from disclosure pursuant to the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978) or the New Mexico Renewable Energy Transmission Authority Act (Chapter 6, Article 62A NMSA 1978), submitted to the authority at the offices of the authority in Santa Fe, and indicating the address and telephone number of the authority;

(vii) a statement that property owners whose property lies within the proposed project route in New Mexico may submit written comments on the application to the authority on or before the date of the board of directors' meeting at which the authority will consider the application;

(viii) a statement that property owner(s) whose property lies within the proposed project route in New Mexico may appear at the time and place of the authority's board of directors' meeting at which the authority will consider the application, and may make written or oral comments on the application at the meeting;

(ix) a statement that any and all agency approvals required by law have been obtained and all reviews required by any other agency have been satisfactorily completed. Copies of all supporting documentation or review results shall be submitted along with the application.

(e) The applicant shall bear the cost of publication.

(f) If the authority requires the applicant to publish the notice in accordance with this rule, the applicant shall ensure that an affidavit of publication is provided to the authority promptly upon last publication of the notice.

(2) Comment. The authority shall

provide opportunity for written and oral comments on the application by property owner(s) whose property lies within the proposed project route in New Mexico. The authority shall provide a comment period of at least 30 days following last publication of the notice pursuant to Paragraph (1) of Subsection D of 17.8.3.8 NMAC, but may provide a reasonable extension of the comment period, not to exceed sixty 60 additional days. Oral comments shall be received at the meeting of the authority wherein the issue is to be considered.

E. Findings and determination:

(1) For projects in which the authority already participates, the authority may approve the proposed agreement if the criteria below are satisfied in the sole discretion of the board of directors of the authority:

(a) The property comprising the route in New Mexico is necessary for the project. Consideration and selection of the proposed route through review under NEPA, or other governmental review, if undertaken, shall serve to satisfy this requirement.

(b) The proposed project route in New Mexico will not involve taking utility-owned property. Applicant's affidavit or letters or documentation from relevant New Mexico utilities shall serve to satisfy this requirement.

(c) The project will not materially diminish electric service reliability of the transmission system in New Mexico, as determined by the New Mexico public regulation commission. If the public regulation commission has not yet made this determination, the authority may approve the application subject to a New Mexico public regulation commission determination. that the project will not materially diminish electric service reliability of the transmission system in New Mexico.

(d) The project and the proposed agreement, as may be modified by the authority, are in the public interest.

(e) The applicant has the financial capacity to complete the project.

(2) The authority shall make its determination on the application within 120 days of the applicant's submittal of its application, which may be extended if the comment period is extended.

(3) If the authority denies the application, the authority shall inform the applicant in writing within 15 days after the denial the reasons for the denial in the context of the criteria set forth herein, and shall provide opportunity to submit an amended application. The new application shall include additional information demonstrating the applicant has met the requirements for approval set forth herein. The amended application will go through the approval process contained in this section

including the requirements for public notice and comment.

[17.8.3.8 NMAC - N, 12/15/2011]

17.8.3.9 NEGOTIATION WITH PROPERTY OWNERS:

Prior to the exercise of the authority's eminent domain powers, negotiations with private property owner(s) by the applicant must be by reasonable and diligent efforts to acquire property needed for the project, including by offering at least fair market value for the property. At any time during applicant's negotiations with property owner(s) and upon the applicant's request, the authority may participate in such negotiations in order to facilitate the voluntary acquisition of property for a project, but the applicant shall remain responsible for conducting good faith negotiations.

[17.8.3.9 NMAC - N, 12/15/2011]

17.8.3.10 CONDEMNATION PROCEDURES:

A. Condemnation proceedings.

(1) Upon initiating condemnation procedures, the authority shall expeditiously and diligently follow the condemnation procedures set forth in the Eminent Domain Code found at NMSA 1978, Section 42A-1-1 *et seq.* as it may be modified from time to time.

(2) The applicant shall cooperate with the authority to assist the authority in carrying out the authority's procedures set forth herein and its obligations under the law in an expeditious and diligent manner.

B. Costs and expenses.

(1) The applicant shall be responsible for all costs and expenses incurred by the authority in the condemnation action, including all attorneys' fees. The applicant shall pay all such costs and expenses within 30 days after receipt of an invoice for such from the authority, subject to dispute provisions which shall be set forth in the agreement. If an applicant fails to timely pay all such costs and expenses, the authority may discontinue the condemnation action.

(2) Prior to the authority's initiation of condemnation proceedings under the Eminent Domain Code, the applicant shall obtain a surety or cash bond in an amount agreed to by the parties and as required by law.

(3) The authority shall diligently work to reasonably minimize damages, other costs, and litigation expenses for which the applicant is responsible. The authority shall consult with the applicant prior to incurring substantial costs or expenditures, whenever practicable. The authority shall not make any offer above fair market value without prior approval by the applicant.

[17.8.3.10 NMAC - N, 12/15/2011]

17.8.3.11 O T H E R AGREEMENTS; DISPOSITION OF PROPERTY:

A. In addition to the agreement, the authority and the applicant may enter into any other contracts or agreements they deem necessary setting forth the roles and obligations of the parties in the condemnation proceeding, the disposition and use of the property once acquired by the authority, and any other matter. The authority may dispose of any or all of the property in accordance with New Mexico law if it determines that doing so fulfills a public purpose. The use of the property for the same purpose for which the property was condemned is deemed to fulfill a public purpose.

B. If the property cannot be used for the purpose for which it was condemned, and if practicable and permissible under existing laws, the authority shall offer the property owner an opportunity to purchase the property from the authority at fair market value.

[17.8.3.11 NMAC - N, 12/15/2011]

17.8.3.12 INDEMNIFICATION:

The agreement shall provide that the applicant shall indemnify and hold harmless the authority against any and all liability arising pursuant to the authority's actions under this rule and the Eminent Domain Code.

[17.8.3.12 NMAC - N, 12/15/2011]

17.8.3.13 VARIANCES:

A. An applicant may request a variance from any of the requirements of this rule, provided such variance will not create a conflict with state law.

B. A petition for variance must be supported by an affidavit signed by an officer of the applicant or someone with authority to sign for the applicant.

C. The applicant shall send notice of any request for a variance to the property owner(s) who are affected by the variance or who possess an ownership interest in the property. The notice shall indicate the nature of the variance requested and state that the property owner(s) may submit written or oral comments on the request for a variance. The authority may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination on a request for variance. In the event an informal conference or a formal evidentiary hearing is held, oral comment shall be accepted at that time.

D. A petition for variance shall:

(1) identify the section of this rule for which the variance is requested;

(2) describe the situation that necessitates the variance;

(3) describe the effect of

complying with this rule on the applicant if the variance is not granted; and

(4) describe the result the variance will have if granted.

[17.8.3.13 NMAC - N, 12/15/2011]

HISTORY OF 17.8.3 NMAC: [RESERVED]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.4 NMAC, Sections 9 and 13 effective 12/15/2011.

3.1.4.9 THE REQUIREMENT OF A CORRECT MAILING ADDRESS:

A. All notices, returns or applications required to be made by the taxpayer must include the correct mailing address of the taxpayer and the taxpayer must promptly advise the department in writing of any change in mailing address. If the department has prescribed a form or format for reporting a change of address, the form or format must be followed provided that, if the required information is contained in a change of address form or notice of the United States postal service, the United States postal service change of address form or notice may be used in lieu of the department form.

B. If a taxpayer notifies the United States postal service of a change in the taxpayer's mailing address and this information is given by the United States postal service to the department either voluntarily or upon the department's request, the taxpayer shall have fulfilled the taxpayer's obligation to notify the department of a change in mailing address. Unless the taxpayer specifically notifies the department that the change of mailing address does not apply to mailings from the department to the taxpayer, the notice by the taxpayer to the United States postal service of a change in the taxpayer's mailing address and given by the United States postal service to the department applies to mailings from the department.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.4.9 NMAC - Rn, 3 NMAC 1.4.9, 12/29/00; A, 12/15/11]

3.1.4.13 REPORTING ACCORDING TO BUSINESS LOCATION

A. REPORTING ACCORDING TO BUSINESS LOCATION - GENERAL:

(1) Any person maintaining more than one place of business in New Mexico and reporting under one identification number is required to report the taxable gross receipts for each location on a single CRS-1 form. Receipts from locations in

each municipality or in each county outside a municipality where a place or places of business are maintained must be indicated separately on the CRS-1 form.

(2) A person who maintains multiple places of business in a single municipality or multiple places of business not within a municipality but within a single county and who reports under one identification number is required to combine the taxable gross receipts from these places of business, indicating the total taxable gross receipts derived from all locations in each municipality or county on the CRS-1 form.

(3) For persons engaged in the construction business, "place of business" includes each place where construction is performed.

(4) The "place of business" of a person who has no other place of business in New Mexico, but who has sales personnel who reside in New Mexico, includes each place where such personnel reside. Such persons are required to report gross receipts in the manner provided in Paragraphs (1) and (2) of Subsection A of 3.1.4.13 NMAC. The place of business of a person who has no other place of business and does not have sales personnel who reside in New Mexico but who does have service technicians who perform service calls in New Mexico is "out of state", whether the service technicians live in New Mexico or elsewhere. For the purposes of Paragraph (4) of Subsection A of 3.1.4.13 NMAC, a "service technician" is an employee whose primary work responsibility is the repair, servicing and maintenance of the products sold or serviced by the employer and whose sales activities are at most incidental.

(5) A person[~~other than an itinerant peddler;~~] who is liable for the gross receipts tax and who has no "place of business" or resident sales personnel [~~or other employees such as service technicians~~] in New Mexico is required to indicate on the CRS-1 form that the business location is "out-of-state".

(6) A person is required to report receipts for the location where the place of business is maintained even though the sale or delivery of goods or services was not performed at or from the place of business, except as provided in Subsection J of this section. It should be noted, however, that each construction site, as indicated in Paragraph (3) of Subsection A of 3.1.4.13 NMAC, is a "place of business" for this purpose.

(7) If a person has more than one place of business in New Mexico, the department will accept, on audit, this person's method of crediting sales to each place of business, provided the method of crediting is in accordance with the person's regular accounting practice and contains no obvious distortion.

(8) Example 1: The X company maintains its only place of business in Roswell, but sends its sales personnel to different cities in New Mexico to solicit sales and take orders. X is not required to report its gross receipts for each municipality in which its sales personnel are operating. X reports its gross receipts only for Roswell because its sole place of business is Roswell.

(9) Example 2: The Z company maintains its only place of business in Grants. It makes deliveries in its own trucks to customers in various other cities within New Mexico. Z is not required to report its gross receipts for each municipality in which it makes deliveries. Z reports its gross receipts only for Grants. It is not maintaining a place of business in municipalities outside Grants solely because of its deliveries.

(10) Example 3: The W furniture company maintains its only office and showroom inside the city limits of Carrizozo. W's furniture warehouse is located outside the Carrizozo city limits. Furniture sold by W is, for the most part, delivered from its warehouse. W's "place of business" is in Carrizozo and it must report all its gross receipts for that municipality, regardless of the location of its warehouse.

(11) Example 4: The X appliance company maintains offices and showrooms in both Truth or Consequences and Las Cruces. The Truth or Consequences place of business initiates a sale of a refrigerator. The refrigerator is delivered from stock held in the Las Cruces place of business. X's place of business to which it credits the sale will be accepted on audit, if the crediting is in accordance with X's method of crediting sales in its regular accounting practice and contains no obvious distortion. If X credits the sale to its Truth or Consequences place of business, the department will accept Truth or Consequences as the location of the sale. The same result will occur if X credits the sale to its Las Cruces place of business.

B. REPORTING ACCORDING TO BUSINESS LOCATION - UTILITIES:

(1) Each municipality and the portion of each county outside a municipality in which customers of a utility are located constitute separate places of business. The physical location of the customer's premises or other place to which the utility's product or service is delivered to the customer is a business location of the utility.

(2) The department will accept, on audit, a utility's method of crediting its sales to its places of business, provided the method of crediting is based on the location of its customers as business locations and the method of crediting contains no obvious distortion.

(3) For the purposes of 3.1.4.13 NMAC, "utility" means a public utility or any other person selling and delivering or

causing to be delivered to the customer's residence or place of business water via pipeline, electricity, natural gas or propane, butane, heating oil or similar fuel or providing cable television service, telephone service or internet access service to the customer's residence or place of business.

C. REPORTING BY PERSONS ENGAGED IN THE LEASING BUSINESS: A person from out of state who is engaged in the business of leasing as defined in Subsection E of Section 7-9-3 NMSA 1978 and who has no place of business or resident sales personnel in New Mexico is required to indicate "out-of-state" on the CRS-1 report form and to calculate gross receipts tax due using the tax rate for the state. An out-of-state person engaged in the business of leasing who has a place of business or resident sales personnel in New Mexico is required to report gross receipts for each municipality or area within a county outside of any municipalities in which the person maintains a place of business or resident sales personnel. An in-state person engaged in the business of leasing with more than one place of business is required to report gross receipts for each municipality or area within a county outside of any municipality in which the person maintains a place of business.

D. REPORTING TAXABLE GROSS RECEIPTS BY A PERSON MAINTAINING A BUSINESS OUTSIDE THE BOUNDARIES OF A MUNICIPALITY ON LAND OWNED BY THAT MUNICIPALITY: For the purpose of distribution of the amount provided in Section 7-1-6.4 NMSA 1978, persons maintaining a place of business outside the boundaries of a municipality on land owned by that municipality are required to report their gross receipts for that location. For the purpose of calculating the amount of state and local gross receipts tax due, such persons shall use the sum of the gross receipts tax rate for the state plus all applicable tax rates for county-imposed taxes administered at the same time and in the same manner as the gross receipts tax.

E. ITINERANT PEDDLERS - TEMPORARY BUSINESS LOCATIONS:

(1) An itinerant peddler is a person who sells from a nonreserved location chosen for temporary periods on a first-come, first-served basis. An itinerant peddler does no advertising or soliciting, has no one employed to sell and is not employed as a salesperson.

(2) An itinerant peddler shall report taxable gross receipts by the municipality or the area of a county outside any municipality where the peddler maintains a place of business. If the itinerant peddler sells from only one location, that location shall be the place of business. If an individual peddler

has no set sales location, the place of business shall be the peddler's temporary or permanent residence within New Mexico.

(3) Example: X occasionally places a blanket on a sidewalk in a town wherever X can find space for the blanket and sells homemade pies. X is an itinerant peddler because the space is not reserved specifically for X, it is chosen for temporary periods, and X is not employed nor does X have employees. Additionally, because X cannot be expected to be found regularly carrying on business at the same sidewalk location every day, X's place of business, for reporting purposes, is X's residence.

(4) Any person who pays a fee to occupy a particular location or space for a determined period of time and who sells any item or performs any service at that location is not an itinerant peddler and shall report that location as a place of business.

(5) Example: X pays fifty dollars \$50.00 to rent a space for a booth for two days during a festival. X is not an itinerant peddler because the space was assigned, and during the festival X could normally be expected to be found carrying on business at that place. X must therefore report the gross receipts from sales made during the festival to the location of the space.

(6) Any person who, in advance, advertises through print or broadcast media or otherwise represents to the public that the person will be at a particular location for a specified period of time and who sells property or performs service at that location shall report that location as a place of business.

(7) Example: X sells fish from a truck in a shopping center parking lot. X places an advertisement in the local paper informing the public where X will be located and the dates when X will sell fish at that location. X is not an itinerant peddler because X advertises and solicits business, and X can normally be expected to be found at that location during the time designated in the advertisement. The shopping center is X's place of business and X must report all activity occurring there to that location.

F. O B V I O U S DISTORTION: For purposes of 3.1.4.13 NMAC, obvious distortion shall be presumed whenever the method used to credit sales to a place of business treats similar transactions inconsistently. Any method which intentionally credits sales to a location with a lower combined tax rate primarily for the purpose of reducing the taxpayer's total tax liability shall be presumed to contain obvious distortion, shall not be allowed and may be the basis of establishing intent to evade or defeat tax under the provisions of Section 7-1-72 NMSA 1978.

G. SPACE PROVIDED BY CLIENT CONSTITUTES BUSINESS LOCATION:

(1) Except as provided otherwise in Paragraph (6) of Subsection G of 3.1.4.13 NMAC, any person performing a service who occupies space provided by the purchaser of the service being performed has established a business location if the following conditions are present:

(a) the space is occupied by the provider of the service for a period of six consecutive months or longer;

(b) the provider or employees of the provider of the service are expected, by the purchaser of the services or representatives of the purchaser, to be available at that location during established times; and

(c) critical elements of the service are performed at, managed or coordinated from the purchaser's location.

(2) The following indicia will be considered in determining if the above conditions are present:

(a) the provider of the service has assigned employees to the client's location as a condition of employment;

(b) telephone is assigned for the exclusive use by the service provider;

(c) the space has been designated for the use of the service provider;

(d) the space contains office furniture or equipment furnished by either the client or the service provider for the sole use of the service provider;

(e) the service provider is identified by business name on a sign located in or adjacent to the provided space;

(f) the client or other persons can expect to communicate, either in person or by telephone, with the service provider or employees or representatives of the service provider at the space provided by the client; and

(g) the contract between the client and the service provider requires the client to provide space to the service provider.

(3) Any person meeting the three conditions as evidenced by the listed indicia must report the receipts derived from the performance of the service at the client's location to the municipality or county in which the furnished space is located.

(4) Example 1: X has entered into a contract to perform research and development services for the army at a location on White Sands missile range within Doña Ana county. The term of the contract is one year and is renewable annually. X is required by the contract to assign employees to the project at White Sands missile base on a full-time basis. The assigned employees consider White Sands as their place of employment. The army furnishes X with office and shop space as well as furniture and equipment. The space is identified as X's location by a sign containing X's business name at the main entrance to the assigned space. A specific telephone number has been assigned for X's exclusive use during

the term of the contract. X shall report the receipts from services performed at the White Sands location under this contract using Doña Ana county as the location of business for gross receipts tax purposes.

(5) Example 2: Y has entered into a maintenance contract with a state agency to maintain and repair computer equipment. The state agency provides storage facilities to Y for the storage of equipment and parts which will be used by Y in the maintenance and repair of computer equipment. Y's employees are present at the location of the state agency only when required to repair the computers. The agency contacts Y at Y's regular place of business to report equipment problems and to request necessary repairs. On receipt of a request from the agency, Y dispatches an employee to the agency's location to repair the equipment. The location of the state agency does not constitute a separate business location for Y. Y shall report its receipts from the state agency under this contract to the location where Y maintains a regular place of business.

(6) The provisions of Subsection G of 3.1.4.13 NMAC do not apply when:

(a) the provider of the service is a co-employer or joint employer with the client of the employees at the client's location or has entered into a contract to provide temporary employees to work at the client's facilities under the client's supervision and control; and

(b) the provider of the service has no employees at the client's location other than employees described in Subparagraph (a) of Paragraph (6) of Subsection G of 3.1.4.13 NMAC above.

H. REPORTING ACCORDING TO BUSINESS LOCATION - PERSONS SUBJECT TO INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS TAX ACT:

(1) Each municipality and the portion of each county outside all municipalities in which customers of a person who is engaging in an interstate telecommunications business and who is subject to the interstate telecommunications gross receipts tax are located constitute separate places of business. Except for commercial mobile radio service as defined by 47 C.F.R. 20.3, the location of the person's customer is the location of the telephone sets, other receiving devices or other points of delivery of the interstate telecommunications service.

(2) The department will accept, on audit, the person's method of crediting its sales to its places of business, provided the method of crediting is based on the location of its customers as business locations and the method of crediting contains no obvious distortion.

(3) This version of Subsection H

of 3.1.4.13 NMAC applies to all interstate telecommunications gross receipts tax returns due after January 1, 2000.

I. REPORTING ACCORDING TO BUSINESS LOCATION - COMMERCIAL MOBILE RADIO SERVICE PROVIDERS: For interstate telecommunications gross receipts tax returns due after January 1, 2000, each municipality and the portion of each county outside all municipalities in which customers of the provider of a commercial mobile radio service as defined by 47 C.F.R. 20.3 are located constitute separate places of business. With respect to the provision of commercial mobile radio service, the business location of a customer will be determined by the customer's service location. A customer's service location is determined first by the customer's billing address within the licensed service area. If the customer does not have a billing address within the licensed service area or if the customer's billing address is a post office box or mail-drop, then the customer's service location is the street or rural address of the customer's residence or business facility within that service area.

J. TRANSACTIONS ON TRIBAL TERRITORY: A person selling or delivering goods or performing services on the tribal land of a tribe or pueblo that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 is required to report those receipts based on the tribal location of the sale or delivery of the goods or performance of the service rather than the person's business location. [3/5/70, 7/6/79, 11/20/79, 4/11/83, 11/5/85, 1/4/88, 8/22/88, 12/29/89, 8/15/90, 9/3/92, 2/22/95, 10/31/96, 7/30/99, 10/29/99; 3.1.4.13 NMAC - Rn & A, 3 NMAC 1.4.13, 12/29/00; A, 12/30/03; A, 1/17/06; A, 4/30/07; A, 12/15/11]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.9 NMAC, Section 13 effective 12/15/2011.

3.1.9.13 CONDITIONS FOR REFUND OR CREDIT:

A. A refund or credit of tax may be granted to a taxpayer by the secretary or secretary's delegate only if all the following conditions are satisfied:

- (1) the tax has been erroneously paid and payment has been verified from the department's or taxpayer's records;
- (2) the taxpayer has submitted a

proper claim for refund pursuant to Section 7126 NMSA 1978 and the regulations thereunder; and

(3) the secretary has secured the prior approval of the attorney general for any refund of tax and interest erroneously paid [and amounting to \$5,000 or more] when such approval is required in Subsection A of Section 7-1-29 NMSA 1978.

B. The secretary or secretary's delegate, in response to a claim for refund for one type of tax, may credit the amount to be refunded against the amount of any other tax due from the taxpayer. The secretary or secretary's delegate shall give a full accounting of the crediting transaction to the claimant.

C. A taxpayer may not create a credit for a discovered overpayment of tax by understating the amount due on current tax returns to offset amounts paid on prior returns.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.9.13 NMAC - Rn, 3 NMAC 1.9.13, 1/15/01; A, 12/15/11]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.12 NMAC, Section 8 effective 12/15/2011.

3.1.12.8 REPORTING SALE OR USE OF FUEL FOR TURBOPROP OR JET-TYPE ENGINES:

A. [Section ~~7-1-6.7~~ NMSA 1978 provides that an amount each month equal to 3.59% of the gross receipts or value attributable to the sale or use of fuel specially prepared and sold for use in turboprop or jet-type engines shall be distributed to the state aviation fund.] Each month, the department shall distribute to the state aviation fund a percentage of the gross receipts or value attributable to the sale or use of fuel specially prepared and sold for use in turboprop or jet-type engines as specified in Section 7-1-6.7 NMSA 1978.

B. In order for the department to be able to determine the correct amount to be distributed to the aviation fund, the department requires, pursuant to Subsection 7110E NMSA 1978, taxpayers who are in the business of selling fuel for use in turboprop and jet engines, users who are direct purchasers of such fuel from outofstate sources and users who purchase such fuel through the use of nontaxable transaction certificates are required to report the dollar amount of such sales or purchases to the department on forms to be supplied by the department. This information shall be submitted to the department as an attachment to the taxpayer's monthly CRS1 report and is

due by the 25th day of the month following the end of the period covered by the CRS-1 report.

[7/2/82, 11/5/85, 8/15/90, 10/31/96; 3.1.12.8 NMAC - Rn & A, 3 NMAC 1.12.8, 1/15/01; A, 12/15/11]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.3.2 NMAC, Section 11 effective 12/15/2011.

3.3.2.11 CLAIMS FOR SETTLEMENT PAYMENTS FROM THE NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT FUND

A. A claim for a settlement payment from the Native American veterans' income tax settlement fund may be made for any period of active duty in the armed forces of the United States during which the claimant or, where the claimant is a successor, the deceased veteran:

(1) was a member of a federally recognized Indian nation, tribe, or pueblo;

(2) was a resident within the boundaries of the Indian member's or the member's spouse's reservation or pueblo grant, or within the boundaries of lands held in trust by the United States for the benefit of the member or spouse or the member's or spouse's nation, tribe or pueblo; and

(3) had New Mexico personal income tax withheld from his or her active duty military pay, and the amount withheld:

(a) has not already been refunded to the claimant or the claimant's representative; and

(b) cannot be claimed as a refund by filing a New Mexico personal income tax return because the period for filing a refund has run under the applicable statute of limitations.

B. A claim for a settlement payment must provide the following substantiation of the claimant's or, where the claimant is a successor, the deceased veteran's, eligibility for the claim and the amount of the claim.

(1) **Active duty in the armed forces of the United States.** The claimant must provide a copy of *certificate of release or discharge from active duty* (DD Form 214) or other proof of service provided by the department of defense and approved by the department of veterans' service. If a claimant does not have a copy of his or her DD Form 214 or other proof of service, the claimant can request that the department of veterans' services request the claimant's DD Form 214 or other proof of service from the department of defense.

(2) **Status as a Native American.**

The claimant must provide a statement signed by the claimant that the claimant or, where the claimant is a successor, the deceased veteran was a member of a federally recognized Indian nation, tribe, or pueblo during the period(s) of his or her active duty in the armed forces of the United States.

(3) **Domicile on tribal land during period(s) of active duty.** The claimant must substantiate domicile on tribal land (as described in Paragraph (2) of Subsection A above) during the period(s) any New Mexico personal income tax was withheld from active duty military pay. If the address shown on the DD Form 214 or other proof of service is on the claimant's tribal land, the claimant's or deceased veteran's DD Form 214 is sufficient substantiation. If the address shown on the claimant's or deceased veteran's DD Form 214 or other proof of service is not on tribal land, or the claimant cannot establish that the address is on tribal land, the claimant must provide a statement signed by the claimant that the claimant or deceased veteran was domiciled on tribal land during the period(s) any New Mexico personal income tax was withheld from active duty military pay; the statement must provide the claimant's or deceased veteran's address on the tribal land for each period and an official designated by the nation, tribe, or pueblo must attest that each address is on tribal land.

(a) For the purposes of this regulation, "domicile" means a place where an individual has a true fixed home and is a permanent establishment to which the individual intends to return after an absence. Every individual has a domicile somewhere, and each individual has only one domicile at a time. Once established, domicile does not change until the individual moves to a new location with the bona fide intention of making that location his or her permanent home. No change in domicile results when an individual leaves the tribal land if the individual's intent is to stay away only for a limited time, no matter how long.

(b) Examples:

(i) G is a Native American who lives and works on his tribe's pueblo in New Mexico. G joins the marines and is stationed outside New Mexico. G's domicile remains unchanged during his military service unless G moves to a new location with the intent to make that location his permanent home after leaving the military.

(ii) C is a Native American who lives on her tribe's pueblo in New Mexico. She leaves New Mexico to pursue a two-year master's degree program in Spain. She intends to return to her pueblo when she completes her studies. She remains domiciled on her pueblo while in Spain.

(4) **Amount of New Mexico**

personal income tax withheld from active duty military pay. The claimant can substantiate this amount by providing copies of Form(s) W-2 covering active duty military pay for the year(s) during which New Mexico personal income tax was withheld. If a claimant does not have copies of the applicable Form(s) W-2 for one or more of these years, the claimant can request that the taxation and revenue department obtain the claimant's or deceased veteran's Form(s) W-2 (or other withholding information in a form approved by taxation and revenue department) from the department of defense.

(5) **Amount of withholding has not already been refunded.** The claimant must provide a signed statement attesting that the claimant or deceased veteran did not receive a refund of the New Mexico personal income tax withheld for the year(s) for which the claimant is filing a claim for a settlement payment.

C. A claim for a settlement payment must be made by the eligible Native American veteran, or, in the case of a deceased veteran, by the veteran's surviving spouse, other successor or personal representative (an executor, administrator, or anyone in charge of the deceased veteran's property). If the claim is being made for a deceased veteran, the claim must be accompanied by a death certificate or other proof of death and by:

(1) if the claimant is a successor who is not the surviving spouse of the deceased veteran, a signed and dated notarized statement attesting that:

(a) the value of the entire probate estate of the decedent, wherever located, less liens and encumbrances, does not exceed thirty thousand dollars (\$30,000);

(b) at least 30 days have elapsed since the death of the decedent; and

(c) the successor is entitled to the settlement payment, or

(2) if the claimant is a personal representative, executor, or other representative authorized to administer the estate under applicable state law or the tribal law of the deceased veteran, a signed and dated notarized statement attesting that:

(a) he or she has been duly appointed as the personal representative, executor, or other representative of the estate of the decedent; and

(b) a copy of that appointment is attached;

(3) if the estate exceeds thirty thousand dollars (\$30,000), only the surviving spouse, a personal representative, an executor, or other representative of the estate as designated by applicable law or tradition may make a claim.

D. No claim for a settlement payment can be made for an amount of withholding that can be claimed as a refund by filing a New Mexico personal

income tax return. A New Mexico personal income tax return can be filed by a Native American veteran to claim a refund by the later of:

(1) December 31 of the year three years after the veteran separated from military service, or

(2) December 31 of the year three years after the year [the] in which New Mexico personal income tax was withheld from the active duty pay of the veteran.

E. All claims for settlement payments must be made with the department of veterans' services on the form prescribed by the taxation and revenue department. No claim for a settlement payment may be made after December 31, 2012.

F. Settlement payments will include interest on substantiated amounts of eligible withholding, computed on a daily basis from the date of withholding to the date a settlement warrant is issued at the rate specified for individuals pursuant to Section 6621 of the Internal Revenue Code of 1986. The date of withholding will be determined as follows:

(1) for withholding that occurred over an entire calendar year, one-twelfth of the amount withheld during the year will [the] be considered to have been paid on the last day of each calendar month of the year; or

(2) for withholding that occurred over a period of less than an entire calendar year, the amount withheld during the period will be divided by the number of months (including partial months) in the period, and the resulting amount will be considered to have been paid on the last day of each calendar month during the period.

G. Eligible settlement payments will be made by the taxation and revenue department from the Native American veterans' income tax settlement fund. Settlement payments will be made on a "first come, first served" basis until the fund is exhausted or until no further claims are received.

H. Department of veterans' services must determine whether the claim meets the requirements of Paragraphs (1), (2) and (3) of Subsection B above and must act on a claim for settlement payment within 210 days of receipt of the claim. Claims not acted upon within 210 days are deemed denied.

I. A claimant whose claim is denied by department of veterans' services for failure to meet the requirements of Paragraphs (1), (2) and (3) of Subsection B above may dispute the denial by filing with the secretary of the department of veterans' services a written protest of the denial.

(1) The protest must contain the name and address of the claimant and must state with specificity the grounds for the protest. All evidence in support of the protest

must also be submitted with the written protest. The secretary or designated hearing officer shall not consider any evidence that has not been submitted to the department of veterans' services at least 10 days prior to the hearing.

(2) The written protest must be filed within 30 days of the date of mailing to the claimant by the department of veterans' services of the denial of the claim.

(3) Upon timely receipt of a protest, the department of veterans' services shall promptly set a date for hearing and on that date hear the protest. The hearing shall be scheduled no later than 90 days after the filing of the written protest. Notice of the hearing shall be mailed to the protestant no less than 15 days prior to the date of the hearing. The secretary of the department of veterans' services may designate a hearing officer to conduct the hearing. The claimants may appear at a hearing for themselves, may have the assistance of an advocate, or may be represented by an attorney. Hearings shall not be open to the public except upon request of the claimant and may be postponed or continued at the discretion of the secretary or hearing officer.

(4) The technical rules of evidence and the rules of civil procedure shall not apply in the hearings, but hearings shall be conducted so that claims are amply and fairly presented. It is the burden of the claimant to prove that the denial of the claim was improper.

(5) A complete record of the proceedings will be made. A written decision shall be issued within 30 days of the hearing.

J. If the department of veterans' services approves the claim, the claim will be sent to taxation and revenue department to determine whether the claim meets the requirements of Paragraphs (4) and (5) of Subsection B above. The taxation and revenue department must act on a claim within 210 days of the date that the claim is received by the taxation and revenue department from the department of veterans' services. Claims not acted upon within 210 days are deemed denied.

K. A claimant whose claim is denied in whole or in part by the taxation and revenue department for failure to meet the requirements of Paragraphs (4) and (5) of Subsection B above may dispute the denial by filing with the secretary of the taxation and revenue department a written protest of the denial.

(1) The protest must contain the name and address of the claimant and must state with specificity the grounds for the protest. All evidence in support of the protest must also be submitted with the written protest. The secretary or designated hearing officer shall not consider any evidence that has not been submitted to the taxation and revenue department at least 10 days prior to

the hearing.

(2) The written protest must be filed within 30 days of the date of mailing to the claimant by the taxation and revenue department of the denial of the claim.

(3) Upon timely receipt of a protest, the taxation and revenue department shall promptly set a date for hearing and on that date hear the protest. The hearing shall be scheduled no later than 90 days after the filing of the written protest. Notice of the hearing shall be mailed to the protestant no less than 15 days prior to the date of the hearing. The secretary of the taxation and revenue department may designate a hearing officer to conduct the hearing. The claimants may appear at a hearing for themselves, may have the assistance of an advocate, or may be represented by an attorney. Hearings shall not be open to the public except upon request of the claimant and may be postponed or continued at the discretion of the secretary or hearing officer.

(4) The technical rules of evidence and the rules of civil procedure shall not apply in the hearings, but hearings shall be conducted so that claims are amply and fairly presented. It is the burden of the claimant to prove that the claimant or deceased veteran is entitled to a settlement payment.

(5) A complete record of the proceedings will be made. A written decision shall be issued within thirty (30) days of the hearing.

[3.3.2.11 NMAC - N, 12/1/09; A, 12/15/11]

NEW MEXICO WATER QUALITY CONTROL COMMISSION

This is an amendment to 20.6.6 NMAC, Sections 11, 12, 13, 17, 18, 20, 21, 23, 25 and 27, effective December 31, 2011.

20.6.6.11 APPLICATION REQUIREMENTS FOR NEW DISCHARGE PERMITS:

A. An application for a new discharge permit shall include the information in this section.

B. Contact information. An application shall include:

(1) applicant's name, title and affiliation with the dairy facility, mailing address, and phone number;

(2) dairy facility manager's or operator's name, title and affiliation with the dairy facility, mailing address and phone number;

(3) application preparer's name, title and affiliation with the dairy facility, mailing address, phone number and signature; and

(4) mailing address and phone number of any consultants authorized to

assist the dairy facility with compliance with the Water Quality Act and 20.6.2 and 20.6.6 NMAC.

C. Ownership and real property agreements.

(1) An application shall include the dairy facility owner's name, title, mailing address and phone number.

(a) If more than one person has an ownership interest in the dairy facility or a partnership exists, then the applicant shall list all persons having an ownership interest in the dairy facility, including their names, titles, mailing addresses and phone numbers.

(b) If any corporate entity, including but not limited to a corporation or a limited liability company, holds an ownership interest in the dairy facility, then the applicant shall also list the name(s), as filed with the New Mexico public regulation commission, of the corporate entity, and the corporate entity's registered agent's name and address [~~and the names of each of the corporate entity's directors, officers, members, or partners~~].

(2) If the applicant is not the owner of record of the real property upon which the dairy facility is or will be situated, or upon which dairy operations and land application will occur, then the applicant shall submit a copy of any lease agreement or other agreement which authorizes the use of the real property for the duration of the term of the requested permit. Lease prices or other price terms may be redacted.

D. Setbacks.

The applicant shall certify that the setback requirements of 20.6.6.16 NMAC are met. An application shall include a scaled map of the dairy facility layout demonstrating that the proposed layout of the dairy facility meets the setback requirements of 20.6.6.16 NMAC.

E. Dairy facility information and location. An application shall include:

(1) the dairy facility name, physical address and county; and

(2) the township, range and section for the entire dairy facility, which includes the production area and fields within the land application area.

F. Public notice preparation.

An application shall include the name of a newspaper of general circulation in the location of the dairy facility for the future display advertisement publication, the proposed public location(s) for posting of the 2-foot by 3-foot sign, and the proposed off-site public location for posting of the 8.5-inch by 11-inch flyer, as required by 20.6.2.3108 NMAC.

G. Pre-discharge total dissolved solids concentration in ground water. Pursuant to Paragraph (3) of Subsection C of 20.6.2.3106 NMAC, an application shall include the pre-discharge

total dissolved solids concentration from analytical results of ground water obtained from the on-site test boring pursuant to Subsection X of 20.6.6.20 NMAC, if applicable, or from the nearest well within a one-mile radius of the dairy facility. A copy of the laboratory analysis stating the pre-discharge total dissolved solids concentration shall be submitted with the application.

H. Determination of maximum daily discharge volume. An application shall include the following information.

(1) The proposed maximum daily discharge volume and a description of the methods and calculations used to determine that volume.

(2) The identification of all sources of wastewater which may include, but are not limited to, hospital barns, maternity barns, bottle-washing operations and parlor/equipment washdown.

(3) The animal washing method(s) employed and the estimated daily wastewater volume generated by the method(s).

(4) Information regarding other wastewater discharges (i.e., domestic or industrial) at the dairy facility not generated by dairy operations. Permit identification numbers shall be submitted for those discharges that are already permitted.

I. Wastewater quality. An application shall include estimated concentrations of wastewater quality for total dissolved solids, chloride, total sulfur, nitrate as nitrogen, and total Kjeldahl nitrogen [and other constituents of concern related to the standards of 20.6.2.3103 NMAC that may be contained in the wastewater at the dairy facility based on data collected at other dairy facilities with similar discharge(s) volumes and wastewater management systems].

J. Identification and physical description of the dairy facility. An application shall include the following information.

(1) A scaled map of the entire dairy facility pursuant to Subsection U of 20.6.6.20 NMAC.

(2) The identification of each proposed impoundment, including information about its location, purpose (i.e., to store wastewater or stormwater, or dispose of it by evaporation), liner material and storage or evaporative disposal capacity.

(3) The identification of each field within the proposed land application area, including information about its location, acreage, proposed method of wastewater and stormwater application and proposed method of irrigation water application.

(4) The identification of proposed [additional wastewater and stormwater system components such as, but not limited to,] sumps and mix tanks, including information for each component regarding

its location, purpose, construction material, dimensions and capacity.

(5) A description of [the proposed location of all manure, silage and compost storage areas at the dairy facility; including a description of] the proposed method(s) employed to protect each area from stormwater runoff and run-on, and to minimize leachate.

K. Flow metering. An application shall describe a dairy facility's flow metering system pursuant to Subsections J, K, L, M, N and O of 20.6.6.20 NMAC and Subsections [H and J] G and H of 20.6.6.21 NMAC, including:

(1) the identification of the method(s) (i.e., pumped versus gravity flow) of wastewater discharge, stormwater transfer, and wastewater and stormwater land application;

(2) the proposed flow measurement devices for each flow method; and

(3) the identification of flow meter locations.

L. Depth-to-most-shallow ground water and ground water flow direction. An application shall include the following information.

(1) The depth-to-most-shallow ground water pursuant to Subsection X of 20.6.6.20 NMAC.

(2) The ground water flow direction of the most-shallow ground water beneath the dairy facility based on the most recent regional water level data or published hydrogeologic information. Survey data from nearby monitoring wells and a ground water elevation contour map indicating the direction of ground water flow may be included. The sources of all information used to determine ground water flow direction shall be provided with the application.

M. Monitoring wells. An application shall include the proposed monitoring well locations pursuant to Subsections A and B of 20.6.6.23 NMAC.

N. Surface soil survey and vadose zone geology. An application shall include:

(1) the most recent regional soil survey map and associated descriptions identifying surface soil type(s); and

(2) if applicable, the lithologic log obtained from the on-site test boring pursuant to Subsection X of 20.6.6.20 NMAC to identify the geological profile of the vadose zone.

O. Location map. An application shall include a location map with topographic surface contours identifying all of the following features located within a one-mile radius of the dairy facility:

(1) watercourses, lakebeds, sinkholes, playa lakes and springs (springs used to provide water for human consumption shall be so denoted);

(2) wells supplying water for a

public water system and private domestic water wells;

(3) irrigation supply wells; and

(4) ditch irrigations systems, acequias, irrigation canals and drains.

P. Flood zone map. An application shall include the most recent 100-year flood zone map developed by the federal emergency management administration, FEMA, documenting flood potential for the dairy facility, and a description of any engineered measures used for flood protection.

Q. Engineering and surveying. Pursuant to 20.6.6.17 NMAC an application shall include:

(1) plans and specifications for impoundments and associated liners;

(2) plans and specifications for a manure solids separator(s); and

(3) a grading and drainage report and plan.

R. Land application area. For a dairy facility with a land application area, an application shall include the following information.

~~[(1) Documentation of irrigation water rights pursuant to Subsection D of 20.6.6.21 NMAC;~~

~~—(2) (1) A nutrient management plan (NMP) pursuant to Subsections [K and E] I and J of 20.6.6.21 NMAC.~~

~~[(3) (2) A written description of the wastewater sampling location(s) [between the manure solids separator(s) and wastewater impoundment(s)] pursuant to Subsection C of 20.6.6.25 NMAC.~~

~~[20.6.6.11 NMAC - N, 01/31/2011; A, 12/31/2011]~~

20.6.6.12 APPLICATION REQUIREMENTS FOR DISCHARGE PERMIT RENEWAL OR MODIFICATION:

A. An application for a renewed or modified discharge permit shall include the information in this section.

B. Contact information. An application shall include the:

(1) applicant's name, title and affiliation with the dairy facility, mailing address, and phone number;

(2) dairy facility manager's or operator's name, title and affiliation with the dairy facility, mailing address and phone number;

(3) application preparer's name, title and affiliation with the dairy facility, mailing address, phone number and signature; and

(4) mailing address and phone number of any consultants authorized to assist the dairy facility with compliance with the Water Quality Act and 20.6.2 and 20.6.6 NMAC.

C. Ownership and real property agreements.

(1) An application shall include the dairy facility owner's name, title, mailing address and phone number.

(a) If more than one person has an ownership interest in the dairy facility or a partnership exists, then the applicant shall list all persons having an ownership interest in the dairy facility, including their names, titles, mailing addresses and phone numbers.

(b) If any corporate entity, including but not limited to a corporation or a limited liability company, holds an ownership interest in the dairy facility, then the applicant shall also list the name(s), as filed with the New Mexico public regulation commission, of the corporate entity and the corporate entity's registered agent's name and address [~~and the names of each of the corporate entity's directors, officers, members, or partners.~~].

(2) If the applicant is not the owner of record of the real property upon which the dairy facility is or will be situated, or upon which dairy operations and land application will occur, then the applicant shall submit a copy of any lease agreement or other agreement which authorizes the use of the real property for the duration of the term of the requested permit. Lease prices or other price terms may be redacted.

D. Dairy facility information and location. An application shall include:

(1) the dairy facility name, physical address and county;

(2) the discharge permit identification number as designated on the most recent discharge permit for the dairy facility;

(3) the township, range and section for the entire dairy facility, which includes the production area and fields within the land application area; and

(4) the date of initial discharge at the dairy facility.

E. Public notice preparation.

(1) An application for a modified or renewed and modified discharge permit shall include the name of a newspaper of general circulation in the location of the dairy facility for the future display advertisement publication, the proposed public location(s) for posting of the 2-foot by 3-foot sign, and the proposed off-site public location for posting of the 8.5-inch by 11-inch flyer, as required by Subsection B of 20.6.2.3108 NMAC.

(2) An application for a renewed discharge permit without modification shall include the name of a newspaper of general circulation in the location of the dairy facility for the future display advertisement publication as required by Subsection C of 20.6.2.3108 NMAC.

F. Pre-discharge total dissolved solids concentration in ground

water. Pursuant to Paragraph (3) of Subsection C of 20.6.2.3106 NMAC, an application shall include the pre-discharge total dissolved solids concentration in ground water, sample source (e.g., upgradient monitoring well, on-site supply well, nearest well within a one-mile radius of the dairy facility) and a copy of the laboratory analysis.

G. Determination of maximum daily discharge volume. An application shall include the following information.

(1) The proposed maximum daily discharge volume and a description of the methods and calculations used to determine that volume.

(2) The identification of all sources of wastewater which may include, but are not limited to, hospital barns, maternity barns, bottle-washing operations and parlor/equipment washdown.

(3) The animal washing method(s) employed and the estimated daily wastewater volume generated by the method(s).

(4) Information regarding other wastewater discharges (i.e., domestic or industrial) at the dairy facility not generated by dairy operations. Permit identification numbers shall be submitted for those discharges that are already permitted.

H. Identification and physical description of dairy facility. An application shall include the following information.

(1) A scaled map of the entire dairy facility pursuant to Subsection U of 20.6.6.20 NMAC.

(2) The identification of each proposed, existing and closed impoundment, including information for each impoundment regarding its location, purpose (i.e., to store wastewater or stormwater, or dispose of it by evaporation), date of original construction, past and existing liner material, date of current liner installation and storage or evaporative disposal capacity.

(3) The identification of each existing, proposed, and previously used field within the land application area, including information for each field about its location, date of initial application of wastewater or stormwater, acreage, status with regard to having received wastewater or stormwater (i.e. never, inactive, active), current method of backflow prevention employed, current method of wastewater and stormwater application and current method of irrigation water application.

(4) The identification of [~~additional wastewater and stormwater system components such as, but not limited to,~~] sumps and mix tanks, including information for each component regarding its location, purpose, date of original construction, construction material, dimensions and capacity.

(5) The settled solids thickness measurements for each existing wastewater and combination impoundment pursuant to Subsection D of 20.6.6.20 NMAC.

(6) A description of proposed and existing method(s) of solids separation pursuant to Paragraph (5) of Subsection C of 20.6.6.17 NMAC and Subsection F of 20.6.6.20 NMAC.

(7) A [~~description of the location of all manure, silage and compost storage areas at the dairy facility; and a]~~ description of the method(s) employed to protect each manure, silage and compost storage area from stormwater runoff and run-on, and to minimize leachate.

I. Flow metering. An application shall describe a dairy facility's flow metering system pursuant to Subsections J, K, L, M, N and O of 20.6.6.20 NMAC and Subsections [~~F and F~~] G and H of 20.6.6.21 NMAC including:

(1) the identification of the method(s) (i.e. pumped versus gravity flow) of wastewater discharge, stormwater transfer and wastewater and stormwater land application;

(2) a description of the existing and proposed flow measurement devices for each flow method; and

(3) the identification of flow meter locations.

J. Depth-to-most-shallow ground water and ground water flow direction.

(1) An application for renewal or modification shall provide the depth-to-most-shallow ground water and indicate ground water flow direction beneath the dairy facility on a ground water elevation contour map. The ground water elevation contour map shall be developed based upon the most recent ground water levels obtained with a water level measuring device and survey data from on-site monitoring wells obtained from a survey, pursuant to 20.6.6.23 NMAC.

(2) If a dairy facility does not have a monitoring well intersecting most-shallow ground water, an applicant shall provide the following information.

(a) The depth-to-most-shallow ground water pursuant to Subsection X of 20.6.6.20 NMAC.

(b) The ground water flow direction of the most-shallow ground water beneath the dairy facility based upon the most recent regional water level data or published hydrogeologic information. Survey data from nearby monitoring wells and a ground water elevation contour map indicating the direction of ground water flow may be included. The sources of all information used to determine ground water flow direction shall be provided with the application.

K. Monitoring wells. An application shall include:

(1) the construction logs for all existing, on-site monitoring wells, which indicate the date of installation and well driller; and

(2) the identification of monitoring well locations, proposed and existing, pursuant to Subsections A and B of 20.6.6.23 NMAC.

L. Surface soil survey and vadose zone geology. An application shall include:

(1) the most recent regional soil survey map and associated descriptions identifying surface soil type(s);

(2) the lithologic logs from all existing, on-site monitoring wells, if available; and

(3) if applicable, where a dairy facility does not have a monitoring well intersecting most-shallow ground water, the application shall include the lithologic log obtained from the on-site test boring pursuant to Subsection X of 20.6.6.20 NMAC to identify the geological profile of the vadose zone.

M. Location map. An application shall include a location map with topographic surface contours identifying all of the following features located within a one-mile radius of the dairy facility:

(1) watercourses, lakebeds, sinkholes, playa lakes and springs (springs used to provide water for human consumption shall be so denoted);

(2) wells supplying water for a public water system and private domestic water wells;

(3) irrigation supply wells; and

(4) ditch irrigations systems, acequias, irrigation canals and drains.

N. Flood zone map. An application shall include the most recent 100-year flood zone map developed by the federal emergency management administration, FEMA, documenting flood potential for the dairy facility, and a description of any engineered measures used for flood protection.

O. Engineering and surveying. An application shall include the following information.

(1) Plans and specifications for new or improved structures and associated liners proposed by the applicant pursuant to 20.6.6.17 NMAC.

(2) Record drawings and final specifications for existing structures and associated liners. For existing impoundments where record drawings and final specifications do not exist, survey data and capacity calculations shall be submitted pursuant to Subsection C of 20.6.6.20 NMAC.

~~[(3) A grading and drainage report and plan pursuant to Paragraph (6) of Subsection C of 20.6.6.17 NMAC.]~~

P. Land application area.

For a dairy facility with a land application area, an application shall include the following information.

~~[(1) Documentation of irrigation water rights pursuant to Subsection D of 20.6.6.21 NMAC.~~

~~[(2) (1) Documentation confirming the existence of infrastructure necessary to distribute and apply wastewater and stormwater to the land application area pursuant to Subsection [G] E of 20.6.6.21 NMAC.~~

~~[(3) (2) A nutrient management plan (NMP) pursuant to Subsections [K and L] I and J of 20.6.6.21 NMAC.~~

~~[(4) (3) A written description of the wastewater sampling location(s) [between the manure solids separator(s) and wastewater impoundment(s)] pursuant to Subsection C of 20.6.6.25 NMAC.~~

[20.6.6.12 NMAC - N, 01/31/2011; A, 12/31/2011]

20.6.6.13 APPLICATION REQUIREMENTS FOR A DISCHARGE PERMIT FOR CLOSURE:

An application for a discharge permit for closure shall include the information required by Subsections B, C, D, E, F, J, K, L, M and N of 20.6.6.12 NMAC and Paragraphs (1), (2), (3) and (4) of Subsection H of 20.6.6.12 NMAC. For dairy facilities with or previously having a land application area, the application shall also include Paragraph ~~[(2)] (1)~~ of Subsection P of 20.6.6.12 NMAC, specifically pertaining to the past method(s) of wastewater discharge and stormwater application to the land application area.

[20.6.6.13 NMAC - N, 01/31/2011; A, 12/31/2011]

20.6.6.17 ENGINEERING AND SURVEYING REQUIREMENTS FOR ALL DAIRY FACILITIES:

A. Practice of engineering. All plans and specifications, supporting design calculations, record drawings, final specifications, final capacity calculations, grading and drainage reports and plans, and other work products requiring the practice of engineering shall bear the seal and signature of a licensed New Mexico professional engineer pursuant to the New Mexico Engineering and Surveying Practice Act, NMSA 1978, Sections 61-23-1 through 61-23-32, and the rules promulgated under that authority.

B. Practice of surveying. All surveys of wastewater, stormwater, and combination wastewater/stormwater impoundments, monitoring well locations and casing elevations, and other work products requiring the practice of surveying shall bear the seal and signature of a licensed New Mexico professional surveyor pursuant to the New Mexico Engineering and Surveying Practice, NMSA 1978, Sections

61-23-1 through 61-23-32, and the rules promulgated under that authority.

C. Engineering plans and specifications requirements.

(1) **Impoundment plans and specifications.** An applicant or permittee proposing or required to construct a new impoundment or to improve an existing impoundment, including relining of an existing impoundment, shall submit detailed and complete construction plans and specifications and supporting design calculations developed pursuant to this section and 20.6.6.20 NMAC. The applicant or permittee proposing or required to construct an impoundment shall document compliance with the requirements of the dam safety bureau of the state engineer pursuant to Section 72-5-32 NMSA 1978, and rules promulgated under that authority, unless exempt by law from such requirements. The construction plans and specifications for an improvement(s) to an existing impoundment shall address the management of wastewater or stormwater during preparation and construction of the improvements.

(a) Construction plans and specifications proposed by the applicant or permittee shall be submitted to the department with the application for a new, renewed or modified discharge permit.

(b) Construction plans and specifications not proposed by the applicant or permittee but required to achieve compliance with the dairy rule shall be submitted to the department within 90 days of the effective date of the discharge permit.

(2) **Impoundment CQA/CQC.** Construction of a new impoundment or improvement to an existing impoundment shall be done in accordance with a construction quality assurance/construction quality control (CQA/CQC) plan. A CQA/CQC plan shall be included as part of the design plans and specifications. The CQA/CQC plan shall outline the observations and tests to be used to ensure that construction of the impoundment meets, at a minimum, all design criteria, plans and specifications. All testing and evaluation reports shall be signed and sealed by a licensed New Mexico professional engineer experienced in lagoon construction and liner installation. The CQA/CQC plan shall include, at a minimum, the following elements.

(a) The identity of persons responsible for overseeing the CQA/CQC program. The person responsible for overseeing with the CQA/CQC plan shall be a licensed New Mexico professional engineer experienced in lagoon construction and liner installation.

(b) A discussion of how inspections will be performed.

(c) The location, availability, applicability and calibration of testing equipment and facilities, both field and

laboratory.

(d) The procedures for observing and testing the liner material.

(e) The procedures for reviewing inspection test results and laboratory and field sampling test results.

(f) The actions to be taken to replace or repair liner material should deficiencies be identified.

(g) The procedures for seaming synthetic liners.

(h) The reporting procedures for all inspections and test data.

(3) Impoundment improvement - wastewater/stormwater management.

An applicant or permittee proposing or required to improve an existing impoundment, including relining of an existing impoundment, shall submit a plan for managing wastewater or stormwater during the improvement as part of the design plans and specifications. The plan for wastewater or stormwater management shall include the following minimum elements and be implemented upon department approval.

(a) A description of how on-going wastewater discharges or stormwater collection will be handled and disposed of during improvement to the impoundment.

(b) A description of how solids and wastewater or stormwater within the impoundment will be removed and disposed of prior to beginning improvement to the impoundment.

(c) A schedule for implementation through completion of the project.

(d) If the plan proposes temporary use of a location for the discharge of wastewater not authorized by the effective discharge permit, the applicant or permittee shall request temporary permission to discharge from the department.

(4) Manure solids separation plans and specifications - new wastewater system.

An applicant or permittee proposing or required to construct a new manure solids separator as a component of a newly designed wastewater storage or disposal system shall submit construction plans and specifications and supporting design calculations that include the separator, pursuant to this section.

(a) Construction plans and specifications proposed by the applicant or permittee shall be submitted to the department with the application for a new, renewed or modified discharge permit.

(b) Construction plans and specifications not proposed by the applicant or permittee but required to achieve compliance with the dairy rule shall be submitted to the department within 90 days of the effective date of the discharge permit.

(5) Manure solids separation plans and specifications - existing wastewater system. An applicant or

permittee proposing or required to construct a new manure solids separator as a component of an existing wastewater storage or disposal system shall submit a scaled design schematic and supporting documentation, including design calculations. The separator shall be designed to accommodate, at a minimum, the maximum daily discharge volume authorized by the discharge permit, and the volume of manure solids associated with the wastewater discharge. Components of the separator that collect, contain or store manure solids prior to removal or land application shall be designed with an impervious material(s) to minimize generation and infiltration of leachate.

(a) A scaled design schematic and supporting documentation for a proposed separator shall be submitted to the department with the application for a new, renewed or modified discharge permit.

(b) A scaled design schematic and supporting documentation for a separator not proposed by the applicant or permittee but required to achieve compliance with the dairy rule shall be submitted to the department within 90 days of the effective date of the discharge permit.

(6) Grading and drainage report and plan. An applicant [~~or permittee~~] shall submit with the application for a new [~~renewed or modified~~] discharge permit, a grading and drainage report and a grading and drainage plan, including supplemental information associated with the plan. The submittal shall include, at a minimum, the following information.

(a) A scaled map showing:

(i) the dairy facility and the property boundaries of the dairy facility;

(ii) all existing and proposed structures at the dairy facility, with the associated finished floor elevations;

(iii) existing and proposed ground surface contours at two foot vertical intervals; and

(iv) all existing and proposed stormwater management structures at the dairy facility including construction materials, size, type, slope, capacity and inlet and invert elevation of the structures, as applicable.

(b) A copy of the relevant federal emergency management administration, FEMA, flood insurance rate map (FIRM) or flood boundary and floodway map with the dairy facility clearly identified along with all flood zones.

(c) A description of existing drainage conditions at the dairy facility.

(d) A description of the proposed post-development drainage conditions.

(e) Supplemental information supporting the grading and drainage plan shall be submitted to the department with the plan and shall include, at a minimum, the following information:

(i) all hydrologic and hydraulic calculations for design storm events used;

(ii) hydraulic calculations demonstrating capacity or adequacy of existing and proposed stormwater impoundments;

(iii) hydraulic calculations demonstrating capacity of existing and proposed conveyance channels to contain and transport runoff to the stormwater impoundment(s); and

(iv) a description of computer software, documents, circulars, manuals, etc. used to develop the hydrologic and hydraulic calculations.

(7) Flow metering plans [~~and specifications~~]. An applicant or permittee proposing or required to install a flow meter(s) shall submit documentation to support the selection of the proposed device as appropriate for the expected flow rate along with [~~construction plans and specifications detailing~~] a description of the location and information on the installation or construction of each device.

(a) [~~Construction plans and specifications~~] Such information proposed by the applicant or permittee shall be submitted to the department with the application for a new, renewed or modified discharge permit.

(b) [~~Construction plans and specifications~~] Such information not proposed by the applicant or permittee but required to achieve compliance with the dairy rule shall be submitted to the department within 90 days of the effective date of the discharge permit.

D. Engineering design requirements.

(1) Impoundment capacity requirements. Impoundments designed to store wastewater prior to discharging to a land application area or to dispose of wastewater by evaporation shall meet the capacity requirements specified in the dairy rule. The dairy rule does not specify capacity requirements for the containment of stormwater. However, the dairy rule does not exempt a dairy facility from other applicable local, state and federal regulations or laws, including the EPA regulatory requirements for concentrated animal feeding operations pursuant to 40 Code of Federal Regulations, Parts 122 and 412, as amended.

(2) Impoundment capacities - wastewater or wastewater/stormwater combination.

(a) Capacity requirements for dairy facilities discharging wastewater to a land application area.

(i) The wastewater impoundments intended to store wastewater prior to discharging to a land application area shall be designed to contain the maximum daily discharge volume authorized by the discharge permit for a minimum period of

60 days to accommodate periods when land application is not feasible, while preserving two feet of freeboard. This capacity requirement may be satisfied by a single wastewater impoundment or by the collective capacity of multiple impoundments intended to store wastewater.

(ii) The combination wastewater/stormwater impoundments intended to contain both wastewater and stormwater runoff for storage prior to discharging to a land application area shall be designed to contain the sum of the maximum daily discharge volume authorized by the discharge permit for a minimum period of 60 days to accommodate periods when land application is not feasible and the additional volume intended for the containment of stormwater runoff and direct precipitation, while preserving two feet of freeboard. This capacity requirement may be satisfied by a single combination wastewater/stormwater impoundment or by the collective capacity of multiple impoundments intended to store wastewater or wastewater/stormwater.

(b) Capacity requirements for dairy facilities discharging to an evaporative wastewater or combination wastewater/stormwater disposal system.

(i) The wastewater impoundments intended to dispose of wastewater by evaporation shall be designed to contain the maximum daily discharge volume authorized by the discharge permit for disposal by evaporation, while preserving two feet of freeboard. This capacity requirement may be satisfied by a single wastewater impoundment or by the collective capacity of multiple impoundments intended to dispose of wastewater by evaporation.

(ii) The combination wastewater/stormwater impoundments intended to dispose of both wastewater and stormwater runoff by evaporation shall be designed for disposal by evaporation, the sum of the maximum daily discharge volume authorized by the discharge permit and the additional volume intended for the containment of stormwater runoff and direct precipitation while preserving two feet of freeboard. This capacity requirement may be satisfied by a single combination wastewater/stormwater impoundment or by the collective capacity of multiple impoundments intended to dispose of wastewater or wastewater/stormwater by evaporation.

(c) An impoundment designed and used for solids settling shall not be used to satisfy the impoundment capacity requirements of this subsection.

(d) Notwithstanding Subparagraphs (a) and (b) of this paragraph, a wastewater impoundment or system of wastewater impoundments existing as of the effective date of the dairy rule may continue to be operated based upon the design

capacity required under the applicable discharge permit as last issued or amended before the effective date of the dairy rule.

(3) **Stormwater conveyance channels.** Stormwater conveyance channels shall be designed in accordance with the grading and drainage report and plan required by this section.

(4) **Impoundment design and construction - general.** Impoundments required to be synthetically lined shall meet the following design and construction requirements.

(a) The inside slopes of an impoundment shall be a maximum of three (horizontal) to one (vertical), and a minimum of four (horizontal) to one (vertical).

(b) The outside slopes of an impoundment shall be a maximum of three (horizontal) to one (vertical).

(c) The sub-grade of an impoundment shall be compacted to a minimum of [95] 90 percent of standard proctor density. If the existing material is unsuitable for compaction, a minimum depth of 18 inches of suitable material shall be used as sub-grade.

(d) The sub-grade of an impoundment shall provide a firm, unyielding surface with no sharp changes or abrupt breaks in grade.

(e) The minimum dike width of an impoundment shall be 12 feet to allow vehicle traffic for maintenance.

(5) **Impoundment design and construction - liner.** Synthetic impoundment liners shall meet the following additional design and construction requirements.

(a) The liner shall be installed with sufficient slack in the liner material to accommodate shrinkage due to temperature changes. Folds in the liner material shall not be present in the completed liner.

(b) The sub-grade shall be free of sharp rocks, vegetation and stubble to a depth of at least six inches below the liner. The surface in contact with the liner shall be smooth to allow for good contact between liner and sub-grade. The surface shall be dry during liner installation. The liner installer shall provide the owner with a sub-grade acceptance certificate prior to installing the liner indicating acceptance of the earthwork.

(c) The liner shall be anchored in an anchor trench. The trench shall be a minimum of 12 inches wide, 12 inches deep and shall be set back at least 24 inches from the top inside edge of the impoundment.

(d) The liner panels shall be oriented such that all sidewall seams are vertical.

(e) If practicable, decomposing organic materials shall be removed from areas over which a liner will be installed. If such materials remain, a liner vent system shall be installed.

(f) Any opening in the liner

through which a pipe or other fixture protrudes shall be sealed in accordance with the liner manufacturer's requirements. Liner penetrations shall be detailed in the construction plans and record drawings.

(g) The liner shall be installed by, or the installation supervised by, an individual that has the necessary training and experience as required by the liner manufacturer.

(h) Manufacturer's installation and field seaming guidelines shall be followed.

(i) Liner seams shall be field tested by the installer and verification of the adequacy of the seams shall be submitted to department along with the record drawings.

(j) Concrete slabs installed on top of a liner for operational purposes shall be completed in accordance with manufacturer and installer recommendations to ensure liner integrity.

(6) **Impoundment liner - wastewater or wastewater/stormwater combination.** An applicant or permittee proposing or required to construct a new or to improve an existing wastewater or combination wastewater/stormwater impoundment, shall, at a minimum, use a single liner that is at least 60-mil HDPE or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance.

(7) **Impoundment liner - stormwater.** Any applicant or permittee required to improve an existing stormwater impoundment pursuant to Subsection B of 20.6.6.27 NMAC shall, at a minimum, use a liner that is at least 60-mil HDPE or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance.

(8) **Separation between impoundments and ground water.** Impoundments shall not be constructed in a location where the vertical distance between the seasonal high ground water level and the finished grade of the floor of the impoundment is less than or equal to four feet as documented through the most recent ground water data obtained from an on-site test boring(s) or monitoring well(s).

(9) **Impoundment spillways.** Impoundments intended to contain only wastewater shall not be designed with a spillway.

[20.6.6.17 NMAC - N, 01/31/2011; A, 12/31/2011]

20.6.6.18 VARIANCES:

A. A petition for variance from the dairy rule shall be submitted in

accordance with Subsection A of 20.6.2.1210 NMAC.

B. In addition to any other criteria offered by the petitioner, the commission may consider as an unreasonable burden upon the petitioner's activity that the requirements of the dairy rule are unnecessary to prevent ground water pollution due to site-specific conditions.

C. In addition to any other information required under Paragraph (7) of that subsection, the petition shall, if applicable, identify any alternative facility design, alternative measuring device, or other variation from the requirements of the dairy rule and describe why variation from the dairy rule is warranted based upon site-specific conditions.

D. Notwithstanding Subsection C of 20.6.2.1210 NMAC, a variance from the requirements of the dairy rule may be granted for a period of time in excess of five years through the period of the expected useful life of the feature for which a variance is granted.

E. The department may review a variance every five years in conjunction with the discharge permit renewal to determine whether the variance is achieving its designed purpose and whether the variance has caused an exceedance of the standards of 20.6.2.3103 NMAC. If a five year review demonstrates that the variance cannot meet these criteria, the department may request a hearing before the commission to revoke the variance.

[20.6.6.18 NMAC - N, 12/31/2011]

20.6.6.20 OPERATIONAL REQUIREMENTS FOR ALL DAIRY FACILITIES:

A. Notice of presence of [livestock] lactating cows and wastewater discharge. A permittee shall provide written notice to the department of the commencement, cessation, or recommencement of wastewater discharge or the placement, removal, or reintroduction of [livestock] lactating cows as follows.

(1) **For new dairy facilities.**

(a) **Placement of [livestock] lactating cows.** A permittee shall provide written notice to the department a minimum of 30 days before the placement of [any livestock] lactating cows at the dairy facility. A permittee shall provide written verification to the department of the actual date of placement of [any livestock] lactating cows within 30 days of placement.

(b) **Commencement of wastewater discharge.** A minimum of 30 days prior to the estimated initial wastewater discharge date a permittee shall provide written notice to the department indicating the date discharge is proposed to commence. A permittee shall provide written verification to the department of the actual date of

discharge commencement within 30 days of commencement.

(2) **For existing dairy facilities.**

(a) **Removal or reintroduction of [livestock] lactating cows.** A permittee shall provide written notice to the department indicating the date of removal of all [livestock] lactating cows from the dairy facility or the date of reintroduction of any [livestock] lactating cows at the dairy facility, if all [livestock] lactating cows were previously removed, within 30 days of [livestock] lactating cow removal or reintroduction.

(b) **Cessation of wastewater discharge.** A permittee shall provide written notice to the department indicating the date wastewater discharge ceased at the dairy facility within 30 days of the cessation of discharge.

(c) **Recommencement of wastewater discharge.** Written notification shall be submitted to the department a minimum of 30 days prior to the date wastewater discharge is expected to recommence. A permittee shall provide written notice to the department of the actual date of discharge recommencement within 30 days of recommencement.

B. Authorized use of new and existing impoundments. Impoundments shall meet the liner, design, and construction requirements of Subsection D of 20.6.6.17 NMAC; except an impoundment in existence on the effective date of the dairy rule that does not meet the requirements of Paragraphs (4) through (9) of Subsection D of 20.6.6.17 NMAC may continue to receive wastewater or stormwater provided the requirements of Paragraphs (1) or (2) of this subsection are met. If the requirements of Paragraph (1) and (2) of this subsection are not met, such an impoundment may continue to receive wastewater or stormwater provided the requirements of Subsection B of 20.6.6.27 NMAC are met.

(1) The water contaminant concentration in a ground water sample and in any subsequent ground water sample collected from a monitoring well(s) intended to monitor the impoundment does not exceed any ground water standard of 20.6.2.3103 NMAC.

(2) The water contaminant concentration in a ground water sample and in any subsequent ground water sample collected from a monitoring well(s) intended to monitor the impoundment does not exceed the water contaminant concentration in a ground water sample collected from the upgradient monitoring well, if the water contaminant concentration associated with the upgradient monitoring well exceeds the ground water standard(s) of 20.6.2.3103 NMAC. For the purpose of this subsection, ground water samples obtained from the

impoundment monitoring well and the upgradient monitoring well that are used for comparison of water contaminant concentrations shall be collected within two days of each other. In the event ground water quality data for the upgradient monitoring well are not submitted by the permittee, the ground water standard(s) of 20.6.2.3103 NMAC shall be the applicable standard(s) used to assess compliance with the requirements of this subsection.

C. Constructed capacity of existing impoundment - determination.

If record drawings are unavailable or have not been completed for an impoundment constructed before the effective date of the dairy rule to indicate the impoundment capacity of each existing wastewater or combination wastewater/stormwater impoundment, the permittee shall complete an up-to-date survey and capacity calculation for each impoundment. The permittee shall submit the survey data and capacity calculations to the department with the application for a renewed or modified discharge permit.

D. Free-liquid capacity of existing impoundment - determination.

An applicant or permittee shall measure the thickness of settled solids in each existing wastewater and combination wastewater/stormwater impoundment during the twelve-month period prior to the submission of an application for a renewed or modified discharge permit and in accordance with one of the following [procedure] procedures.

(1) **Measure settled solids when the impoundment contains water using the following method:**

(1) (a) The total surface area of the impoundment shall be divided into nine equal sub-areas.

(2) (b) A settled solids measurement device shall be used to obtain one settled solids thickness measurement (to the nearest half-foot) per sub-area. The nine settled solids measurements shall be taken on the same day and the date shall be recorded and submitted to the department with the measurements.

(3) (c) The nine settled solids measurements shall be averaged.

(4) (d) The total volume of settled solids in the impoundment shall be estimated by multiplying the average thickness of the solids layer by the area of the top of the settled solids layer. The area shall be calculated using the impoundment dimensions corresponding to the estimated surface of the settled solids layer.

(5) (e) The estimated volume of settled solids shall be subtracted from the design capacity of the impoundment (less two feet of freeboard) to estimate the actual free-liquid capacity.

(6) (f) The settled solids measurements, calculations, estimation

of total settled solids volume and volume of the actual free-liquid capacity for each impoundment shall be submitted to the department with the application for a renewed or modified discharge permit.

(2) Measure settled solids when the impoundment has been drained of water to its lowest seasonal level using the following method:

(a) Place a visible mark on each of the sidewalls of the pond showing the design depth allowed for sludge accumulation, or establish at least two vertical staff gauges marked to show the design depth allowed for sludge accumulation. The design depth shall be determined based upon the design capacity approved in the most recent discharge permit.

(b) When the pond is drained to its lowest seasonal level, such that the marks showing the depths described above are visible (or would be visible except for sludge accumulation), photograph each of the markings and submit the photographs with the application.

E. Impoundment construction or improvement. Construction of a new impoundment or improvements to an existing impoundment, including relining of an existing impoundment, shall be performed in accordance with the construction plans and specifications and supporting design calculations submitted with the application for a new, renewed or modified discharge permit, or those submitted after issuance of a discharge permit to achieve compliance with the dairy rule. An applicant or permittee shall notify the department at least five working days before starting construction or improvement of an impoundment to allow for an inspection by department personnel. An applicant or permittee shall submit to the department a construction certification report bearing the seal and signature of a licensed New Mexico professional engineer verifying that installation and construction was completed pursuant to Subsection C of 20.6.6.17 NMAC. The construction certification report shall include: record drawings, final specifications, final capacity calculations and the CQA/CQC report.

(1) For new dairy facilities, impoundment construction shall be completed as follows.

(a) Wastewater impoundment construction shall be completed and the construction certification report shall be submitted to the department before discharging wastewater at the dairy facility.

(b) Combination wastewater/stormwater impoundment construction shall be completed and the construction certification report shall be submitted to the department before placing any livestock at the dairy facility.

(2) For existing dairy facilities, impoundment construction shall be

completed:

(a) within one year of the effective date of the discharge permit, if construction of a new impoundment or improvement of an existing impoundment is required to achieve compliance with the dairy rule, or pursuant to the contingency timeframe specified in Subsection B of 20.6.6.27 NMAC when invoked after the effective date of a discharge permit issued pursuant to the dairy rule; and

(b) the construction certification report shall be submitted to the department within 90 days of completion of impoundment construction.

F. Manure solids separator installation. A permittee shall employ manure solids separation. All wastewater discharges to an impoundment shall be made through a manure solid separator.

(1) A permittee installing a new wastewater storage or disposal system shall, before discharging to the new system, construct a manure solids separator(s) in accordance with the construction plans and specifications submitted with the application for a new, renewed or modified discharge permit, or those submitted after issuance of a discharge permit to achieve compliance with the dairy rule. Before discharging to the new system, the permittee shall submit to the department confirmation of solids separator construction, including separator type(s) and location(s).

(2) If an existing dairy facility does not employ manure solids separation, the permittee shall construct a manure solids separator(s) within 150 days of the effective date of the discharge permit. The permittee shall submit confirmation of solids separator construction, including separator type(s) and location(s), to the department within 180 days of the effective date of the discharge permit.

G. Grading and drainage report and plan - submittal and implementation. ~~[An applicant or]~~ A permittee shall complete a new ~~[-or improve an existing]~~ grading and drainage system, in accordance with the grading and drainage report and plan required by Subsection C of 20.6.6.17 NMAC and ~~[submit it]~~ submitted with the application for a new ~~[-renewed, or modified]~~ discharge permit. ~~[An applicant or]~~ A permittee shall submit a post-development drainage report, including record drawings, bearing the seal and signature of a licensed New Mexico professional engineer.

~~[(1) For new dairy facilities, the]~~ The grading and drainage system shall be completed and the post-development drainage report shall be submitted to the department before placing any livestock at the dairy facility.

~~[(2) For existing dairy facilities, the improvements to the grading and drainage system shall be completed within one year~~

~~of the effective date of the discharge permit. The post-development drainage report shall be submitted to the department within 90 days of completion of improvements.]~~

H. Stormwater conveyance. A permittee shall divert stormwater from the corrals and other applicable areas at the dairy facility (i.e., calf pens, alleys, feed storage and mixing, etc.) in accordance with the grading and drainage plan required by Subsection C of 20.6.6.17 NMAC. Stormwater shall be conveyed in a manner that minimizes ponding and infiltration of stormwater.

I. Stormwater management - unlined impoundment. A permittee shall transfer stormwater collected in an unlined impoundment(s) to the wastewater impoundment(s) or the distribution system for the land application area after a storm event to minimize the potential for movement to ground water. Operational pumps shall be available at the dairy facility at all times for the transfer of stormwater from stormwater impoundment(s) to the wastewater impoundment(s) or the distribution system for the land application area, as authorized by a discharge permit.

J. Flow meter installation. A permittee shall employ a flow metering system that uses flow measurement devices (flow meters) to measure the volume of wastewater discharged at the dairy facility. Flow meters shall be installed in accordance with the plans ~~[and specifications]~~ submitted with the application for a new, renewed or modified discharge permit, or those submitted after issuance of a discharge permit to achieve compliance with the dairy rule, pursuant to this section, Subsection C of 20.6.6.17 NMAC, and Subsections ~~[F and J]~~ G and H of 20.6.6.21 NMAC. Flow meters shall be physically and permanently labeled with the discharge permit number, meter identification nomenclature as specified in a discharge permit, and the month and year of meter installation. Confirmation of installation shall include a description of the device type, manufacturer, meter identification, location, record drawings, and the results of the initial field calibration completed pursuant to Subsection E of 20.6.6.24 NMAC.

(1) An applicant or permittee for a new dairy facility shall install flow meters and submit confirmation of flow meter installation to the department before discharging at the dairy facility.

(2) An applicant or permittee for an existing dairy facility shall install flow meters within 150 days of the effective date of the discharge permit and submit confirmation of flow meter installation to the department within 180 days of the effective date of the discharge permit.

K. Flow metering

methods. Flow metering shall be accomplished by the following methods.

(1) For pumped flow discharge or transfer situations, an applicant or permittee shall install a closed-pipe velocity sensing totalizing flow meter(s) on the pressurized discharge or transfer line(s).

(2) For gravity flow discharge or transfer situations, an applicant or permittee shall install an open-channel primary flow measuring device(s) (flume or weir), equipped with head sensing and totalizing mechanisms, on the discharge or transfer line(s).

L. Flow meter locations.

An applicant or permittee shall identify flow meter locations in the application for a new, renewed or modified discharge permit. All flow meters shall be located pursuant to this section and Subsections ~~[F and J]~~ G and H of 20.6.6.21 NMAC, and indicated on the scaled map required by Subsection U of this section.

M. Authorized use of existing flow meters. An applicant or permittee proposing to use an existing flow meter(s) shall submit documentation demonstrating that the existing flow meter(s) is installed consistent with this section, and Subsections ~~[F and J]~~ G and H of 20.6.6.21 NMAC, as appropriate. The proposal shall be submitted with an application for a new, renewed and modified discharge permit and shall include the following documentation.

(1) The location of each existing flow meter indicated on the scaled map required by Subsection U of this section and the identification of the wastewater discharge, or wastewater or stormwater application it is intended to measure.

(2) A copy of the record drawings or manufacturer plans and technical specifications specific to each existing flow meter.

(3) A field calibration report for each existing flow meter, completed pursuant to Subsection E of 20.6.6.24 NMAC.

N. Flow metering - wastewater to impoundment. A permittee shall install flow meters to measure the volume of wastewater discharged from all wastewater sources to the wastewater or combination wastewater/stormwater impoundment(s). The flow meter(s) shall be installed on the discharge line(s) from all wastewater sources to the wastewater impoundment(s). Meter installation and confirmation of meter installation shall be performed pursuant to this section. Alternatively, a dairy existing on the effective date of the dairy rule that does not utilize flow meters meeting the requirements of the preceding sentence may install a flow meter(s) on the water supply line(s) that serves all wastewater sources. Readings from flow meter(s) on water supply lines shall be used to estimate wastewater volumes

discharged to wastewater or combination wastewater/stormwater impoundment(s) without adjustments or deductions to the meter readings.

O. Flow meter inspection and maintenance.

A permittee shall visually inspect flow meters on a weekly basis for evidence of malfunction. If a visual inspection indicates a flow meter is not functioning to measure flow, the permittee shall repair or replace the meter within 30 days of discovery. The repaired or replaced flow meter shall be installed and calibrated pursuant to the dairy rule.

(1) For repaired meters, the permittee shall submit a report to the department with the next quarterly monitoring report following the repair that includes a description of the malfunction; a statement verifying the repair; and a flow meter field calibration report completed pursuant to Subsection E of 20.6.6.24 NMAC.

(2) For replacement meters, the permittee shall submit a report to the department with the next quarterly monitoring report following the replacement that includes plans ~~[and specifications]~~ for the device pursuant to Subsection C of 20.6.6.17 NMAC, and a flow meter field calibration report completed pursuant to Subsection E of 20.6.6.24 NMAC.

P. Impoundment inspection and maintenance.

A permittee shall maintain impoundments to prevent conditions which could affect the structural integrity of the impoundments and associated liners. Such conditions include, but are not limited to, erosion damage; animal burrows or other animal damage; the presence of vegetation including aquatic plants, weeds, woody shrubs or trees growing within five feet of the top inside edge of a sub-grade impoundment, within five feet of the toe of the outside berm of an above-grade impoundment, or within the impoundment itself; evidence of seepage; evidence of berm subsidence; and the presence of large debris or large quantities of debris in the impoundments. A permittee shall inspect impoundments and surrounding berms on a monthly basis to ensure proper condition and control vegetation growing around the impoundments in a manner that is protective of the liners. Within 24 hours of discovery, a permittee shall report to the department any evidence of damage that threatens the structural integrity of a berm or liner of an impoundment or that may result in an unauthorized discharge. A permittee is not required to report routine berm maintenance to the department.

Q. Pipe and fixture inspection and maintenance.

A permittee shall maintain pipes and fixtures used for the conveyance or distribution of wastewater or stormwater at the dairy facility to prevent

the unauthorized release of wastewater or stormwater. The permittee shall visually inspect pipes and fixtures on a weekly basis for evidence of leaks or failure, and shall maintain written records at the dairy facility of all such inspections including repairs to the pipes and fixtures. Where pipes and fixtures cannot be visually inspected because they are buried, the permittee shall inspect the area directly surrounding the features for evidence of leaks or failure (e.g., saturated surface soil, surfacing wastewater, etc.). If there is evidence an unauthorized discharge has resulted from damaged or faulty pipe(s) or fixture(s), the permittee shall repair or replace the pipe(s) or fixture(s) within 72 hours of discovery. The permittee shall report the unauthorized discharge to the department pursuant to 20.6.2.1203 NMAC.

R. Leachate management

- manure solids separation system. A permittee shall manage the solids captured by and removed from the manure solids separation system(s) and stored at the dairy facility before removal or land application to minimize generation and infiltration of leachate. The manure solids removed from the manure solids separation system and leachate generated from those solids shall be collected and contained on an impervious surface before disposal.

S. Leachate management

- manure and compost storage. Unless land application of manure solids and composted materials is authorized by a discharge permit, a permittee shall remove manure solids and composted material from the dairy facility. A permittee shall minimize the generation and infiltration of leachate from stockpiled manure solids and composted material before removal from the dairy facility by diverting stormwater run-on and run-off, and preventing ponding within areas used for manure and compost stockpiling.

T. Leachate management

- silage storage. A permittee shall minimize the generation and infiltration of leachate from silage storage areas and prevent ponding within silage storage areas. Leachate generated from the silage storage areas shall be collected and contained on an impervious surface or the stormwater impoundment before disposal.

U. Scaled map of dairy facility.

An applicant or permittee shall submit a scaled map of the dairy facility to the department with an application for a new, renewed or modified discharge permit. The map shall be clear and legible, and drawn to a scale such that all necessary information is plainly shown and identified. The map shall show the scale in feet or metric measure, a graphical scale, a north arrow, and the effective date of the map. Multiple maps showing different portions of the facility may be provided using

different scales as appropriate to represent the facility. Documentation identifying the means used to locate the mapped objects (i.e., global positioning system (GPS), land survey, digital map interpolation, etc.) and the relative accuracy of the data (i.e., within a specified distance expressed in feet or meters) shall be included with the map. Any object that cannot be directly shown due to its location inside of existing structures, or because it is buried without surface identification, shall be identified on the map in a schematic format and identified as such. The map shall include the following objects:

- (1) the overall dairy facility layout (barns, feed storage areas, pens, etc.);
- (2) the location of all sumps;
- (3) the location of all manure solids separators;
- (4) the location of all wastewater, stormwater, and combination impoundments;
- (5) the location of all mix tanks;
- (6) the location and acreage of each field within the land application area;
- (7) the location of all monitoring wells;
- (8) the location of all irrigation wells;
- (9) the location of all meters measuring wastewater discharges to and from impoundments;
- (10) the location of all meters measuring stormwater applied to the land application area;
- (11) the location of all fixed pumps for discharge and transfer of wastewater or stormwater;
- (12) the location of all wastewater and stormwater distribution pipelines;
- (13) the location of each ditch irrigation system, acequia, irrigation canal and drain;
- (14) the location of all backflow prevention methods or devices;
- (15) all wastewater sampling locations, with the exception of impoundments for disposal by evaporation; and
- (16) location of all septic tanks and leachfields.

V. Scaled map of dairy facility - updates. Following completion of additions or changes to the dairy facility layout which affects items required by Subsection U of this section, a permittee shall update and resubmit to the department the dairy facility map required by this section within 90 days of any additions or changes to the dairy facility layout which affects items required by Subsection U of this section.

W. Animal mortality management. All animal mortalities that may legally be disposed of (buried or composted) on a dairy facility shall be managed in accordance with the following requirements.

- (1) Only mortalities originating at

the dairy facility may be disposed of at the dairy facility.

(2) Mortalities shall not be stored or buried within 200 feet (measured as horizontal map distance) from private or public wells, or any watercourse.

(3) Mortalities shall not be stored or buried within 100 feet (measured as horizontal map distance) from the 100-year flood zone of any watercourse, as defined by the most recent federal emergency management administration, FEMA, map.

(4) Stormwater run-on to disposal areas shall be prevented by use of berms or other physical barriers.

(5) Mortalities disposed of by burial shall be placed in a pit(s) where the vertical distance between the seasonal high ground water level and the floor of the pit(s) is greater than 30 feet as documented through the most recent ground water data obtained from an on-site test boring(s) or monitoring well(s).

X. Determination of ground water conditions. An applicant or permittee for a dairy facility without a monitoring well from which depth-to-most-shallow ground water can be measured in accordance with the procedure required by Paragraph (1) of Subsection F of 20.6.6.23 NMAC shall evaluate ground water conditions by the following methods.

(1) The applicant or permittee shall obtain records from the office of the state engineer for all wells on file with the office of the state engineer located within one mile of the boundary of the dairy facility. The applicant or permittee shall submit to the department in tabular format the following information obtained from the office of the state engineer records: the well identification information; location of each well by latitude/longitude and township, range, and section; use of each well; depth to ground water in each well; and total depth of each well.

(2) If any well record information submitted pursuant to Paragraph (1) of this subsection indicates that depth to ground water is less than 100 feet, or in lieu of the requirement of Paragraph (1) of this subsection, the applicant or permittee shall conduct the following activities.

(a) The applicant or permittee shall drill one site-specific test boring to the depth of most-shallow ground water or a depth of 75 feet (measured from the ground surface), whichever is encountered first. The test boring shall be drilled in an area of low elevation within the production area outside of an existing or proposed impoundment.

(b) The applicant or permittee shall describe the lithology from the ground surface to the completed borehole depth and document the depth of most-shallow ground water or the absence of ground water within 75 feet of the ground surface. If ground water

is encountered within 75 feet of the ground surface, the depth of most-shallow ground water shall be measured immediately upon ceasing drilling of the boring and again 24 hours following ceasing drilling. Lithology shall be characterized pursuant to American society of testing and materials (ASTM) test method D 2487 or D 2488 or characterized using standard visual geologic or soils descriptions that shall include lithology, grain size, color (Munsell soil color charts may be used), texture, sorting, percent gravel and degree of induration. The lithologic log and most-shallow ground water information shall be submitted to the department with the application for a new, renewed or modified discharge permit.

(c) Upon completion of ground water measurements, unless the borehole is completed as a monitoring or production well, the borehole shall be immediately abandoned by emplacing neat cement grout, bentonite based plugging material, or other sealing material approved by the state engineer in accordance with 19.27.4 NMAC in the borehole from the bottom of the borehole to the ground surface. A written record of borehole abandonment shall be submitted to the department with the application for a new, renewed or modified discharge permit and shall describe the type of grout used and the depth interval sealed with grout. If a monitoring well is constructed in the borehole, the monitoring well shall be constructed in accordance with Subsection D of 20.6.6.23 NMAC, and a construction log including well record information specified by 19.27.4 NMAC shall be submitted to the department with the application for a new, renewed or modified discharge permit.

Y. Domestic wastewater. Domestic wastewater shall not be commingled with wastewater or stormwater generated at a dairy facility. Domestic wastewater shall be treated or disposed of pursuant to 20.7.3 NMAC or a discharge permit issued solely for the discharge of domestic wastewater, as appropriate. [20.6.6.20 NMAC - N, 01/31/2011; A, 12/31/2011]

20.6.6.21 ADDITIONAL OPERATIONAL REQUIREMENTS FOR DAIRY FACILITIES WITH A LAND APPLICATION AREA:

A. Impoundment storage capacity management - wastewater and wastewater/stormwater combination. A permittee shall operate and maintain a wastewater or combination wastewater/stormwater impoundment(s) for the purpose of storing wastewater prior to discharging to the land application area. A permittee shall manage wastewater or combination wastewater/stormwater impoundments to maintain the capacity and two feet of

freeboard required by Subsection D of 20.6.6.17 NMAC.

~~[B.]~~ **Prohibition of irrigation water storage in permitted impoundments.** A permittee shall not introduce irrigation water into any impoundment authorized by a discharge permit for the storage of wastewater or stormwater.

~~[C.]~~ **B. Authorized land application of wastewater and stormwater.** A permittee shall apply wastewater and stormwater to fields within the land application area, up to the maximum acreage of irrigated cropland specifically authorized by a discharge permit. Wastewater and stormwater shall be distributed uniformly over the field at the planned rate consistent with the nutrient management plan (NMP); ponding shall be minimized.

~~[D.]~~ **Irrigation water rights - documentation.** An applicant or permittee shall submit documentation of irrigation water rights from the office of the state engineer for all fields within the land application area to the department with the application for a new, renewed or modified discharge permit. Land application shall not be authorized unless the documentation demonstrates adequate water rights are held for irrigation to produce and harvest the crops necessary for the removal of nitrogen while the permit is in effect as required in this section.

~~[E.]~~ **C. Land application area - fresh irrigation water required.** Wastewater shall only be applied to fields within the land application area receiving fresh irrigation water. Fresh irrigation water shall be used as the primary source to meet the water consumptive needs of the crop to support crop production and nutrient removal. Wastewater and stormwater are intended as sources of crop nutrients and shall not be used as a primary source to meet the water consumptive needs of the crop.

~~[F.]~~ **D. Wastewater/irrigation water blending.** ~~[A permittee shall not combine wastewater with irrigation water in an impoundment.]~~ Wastewater may be blended in-line (i.e., fresh irrigation water supply lines) when fresh water irrigation lines are equipped with a reduced pressure principle backflow prevention assembly (RP). Wastewater may also be blended in a mix-tank(s), applied alternately in the same irrigation line which has been physically disconnected from supply wells, or applied in a separate line, as authorized by a discharge permit. Wastewater may be blended with fresh water in a wastewater impoundment prior to land application so long as:

(1) the permittee maintains an accurate written record of the volume of fresh water added to the wastewater and that volume is accounted for in determining the volumes of wastewater applied for purposes

of the nutrient management plan;

(2) fresh water is introduced in a safe manner to prevent scouring of the liner;

(3) the impoundment capacity requirements of this rule are met.

~~[G.]~~ **E. Land application area - existing infrastructure.** An applicant or permittee shall submit documentation for the existing infrastructure necessary to transfer, distribute and apply wastewater or stormwater to fields within the land application area that will receive wastewater or stormwater to the department with the application for a new, renewed or modified discharge permit. The documentation shall consist of a narrative statement and photographic documentation that confirm the existing land application distribution system including the type(s) and location(s) of the systems, and the method(s) of backflow prevention employed.

~~[H.]~~ **E. Land application area - new infrastructure.** Before the initial application of wastewater or stormwater to any field within the land application area that has not previously received wastewater or stormwater, an applicant or permittee shall install a land application distribution system to distribute wastewater and stormwater to those fields. The land application distribution system shall be used to distribute and apply wastewater and stormwater to fields within the land application area to meet the requirements of this section. Before the initial application of wastewater or stormwater to any field within the land application area, an applicant or permittee shall submit documentation confirming installation of the land application distribution system. The documentation shall consist of a narrative statement and photographic documentation that confirms the new land application system including the type(s) and location(s) of the system(s), and the method(s) employed for backflow prevention.

~~[I.]~~ **G. Flow metering - wastewater to land application area.** A permittee shall install flow meters to measure the volume of wastewater discharged from the wastewater or combination wastewater/stormwater impoundments to the land application area. The flow meter(s) shall be installed on the discharge line(s) from the wastewater impoundment(s) to the distribution system for the land application area. Meter installation and confirmation of meter installation shall be performed pursuant to Subsections J, K and M of 20.6.6.20 NMAC.

~~[J.]~~ **H. Flow metering - stormwater to land application area.** For a dairy facility transferring stormwater from a stormwater impoundment directly to a distribution system for the land application area, a permittee shall install flow meters to measure the volume of stormwater applied directly to the land application area. The

flow meter(s) shall be installed on the transfer line(s) from the stormwater impoundment(s) to the distribution system for the land application area. Meter installation and confirmation of meter installation shall be performed pursuant to Subsections J, K and M of 20.6.6.20 NMAC.

~~[K.]~~ **L. Nutrient management plan.** Nutrients and other constituents present in wastewater and stormwater shall be applied to irrigated cropland under cultivation in accordance with the requirements of a nutrient management plan (NMP) submitted to the department with the application for a new, renewed, or modified discharge permit. The amount of nitrogen from all combined nitrogen sources, including but not limited to wastewater, stormwater, manure solids, composted material, irrigation water and other additional fertilizer(s), along with residual soil nitrogen and nitrogen credits from leguminous crops, shall be applied to each field within the land application area in accordance with the NMP. The NMP shall be developed through utilization of the U.S. department of agriculture natural resources conservation service (USDA-NRCS) national comprehensive nutrient management plan development templates as adopted by the New Mexico office of the USDA-NRCS and in accordance with the USDA-NRCS *conservation practice standard for New Mexico, nutrient management - code 590*. The NMP shall be developed, signed and dated annually by an individual certified by the American society of agronomy as a certified crop advisor (CCA) or certified professional agronomist (CPAg) and by an individual certified by the New Mexico office of the USDA-NRCS as a nutrient management planner. Plant material and soil sampling protocols in the NMP shall be, at a minimum, equivalent to the requirements of Subsections I, K and L of 20.6.6.25 NMAC. The NMP shall identify the method of crop removal to be employed. The NMP shall be developed for the term of the discharge permit, updated annually, and implemented pursuant to the dairy rule. The permittee shall submit annual updates to the NMP to the department in the monitoring reports due by May 1 of each year.

~~[L.]~~ **I. Crop removal - mechanical or grazing.** A permittee shall remove crops from fields within the land application area by mechanical harvest unless an alternative proposal for the use of grazing is submitted with the application for a new, renewed, or modified discharge permit. If grazing is the method proposed for crop removal, the nutrient management plan (NMP) prepared pursuant to Subsection [K] I of this section shall include a proposal for the use of grazing for crop removal by means of an actively managed rotational grazing system which promotes uniform grazing and

waste distribution throughout the field(s) (and pastures within the field). Proposals shall quantify the degree of nitrogen removal expected to be achieved by grazing, and shall provide scientific documentation supporting the estimated nitrogen removal and justification for the selection of input parameters used in calculations or computer modeling. The NMP proposing grazing for crop removal shall be implemented in its entirety. Annual updates to the NMP shall include updates to the grazing plan as well as a report of actual weight gains, actual nitrogen uptake of the crop, and estimated crop and nutrient removal from the previous season. An NMP which proposes grazing for crop removal shall also include, at a minimum, the following elements.

(1) The length of the grazing season.

(2) The size and number of animals to be grazed.

(3) The estimated weight gain of animals to be grazed, or estimated intake for maintenance or milk production.

(4) The calculations to determine stocking rates, total acreage needed and residency period.

(5) The plant species used to establish pastures and the pasture renovation practices to be employed.

(6) The yield of plant species grown in each pasture and the forage supplied on a monthly basis.

(7) The grazing management system employed and a map indicating key features of the system including water tanks, fencing, and pasture layout with numbering system and acreage of each pasture.

[M:] K. Crop removal - changes to method(s). If a permittee proposes to change the method(s) (i.e., mechanical versus grazing) of crop removal on any field within the land application area authorized by the discharge permit, the permittee shall apply to modify the discharge permit. The permittee shall submit an application which includes the proposed change(s) pursuant to Subsection ~~[K and L]~~ **I and J** of this section. The permittee shall not implement the changes unless the department issues a modified permit approving the changes.

[N:] L. Irrigation ditches - inspection and maintenance. Irrigation ditches used to land apply wastewater or stormwater at a dairy facility shall be concrete-lined ~~[with sealed expansion joints]~~ and shall be maintained in good repair. The permittee shall visually inspect the ditch system on a monthly basis to ensure proper maintenance. Any damage to a lined ditch shall be repaired ~~[immediately]~~ within a reasonable time period. A log shall be kept on-site documenting the inspection findings and repairs made, and the log shall be made available to the department upon request.

[O:] M. Backflow prevention.

A permittee shall protect all water wells used within the land application distribution system from contamination by wastewater or stormwater backflow by installing and maintaining backflow prevention methods or devices. Backflow prevention shall be achieved by a total disconnect (physical air gap separation of at least two times the pipe diameter or complete piping separation when wastewater is being pumped) or by the installation of a reduced pressure principle backflow prevention assembly (RP) between the fresh irrigation water supply and wastewater and stormwater delivery systems.

(1) A permittee for a new dairy facility shall install backflow prevention methods or devices and submit written confirmation of installation to the department before discharging at the dairy facility.

(2) A permittee for an existing dairy facility that lacks backflow protection as required by this subsection shall install backflow prevention methods or devices within 90 days of the effective date of the discharge permit. The permittee shall submit written confirmation of installation to the department within 180 days of the effective date of the discharge permit.

[P:] N. Backflow prevention by reduced pressure principle backflow prevention assembly - inspection and maintenance. A permittee shall have each reduced pressure principle backflow prevention assembly (RP) inspected and tested by a ~~[certified backflow prevention assembly tester]~~ person qualified by the manufacturer at the time of installation, repair, or relocation, and at least on an annual schedule thereafter. ~~[The backflow prevention assembly tester shall have successfully completed a 40-hour backflow prevention course based on the university of southern California's backflow prevention standards and test procedures, and obtained certification demonstrating completion.]~~ A malfunctioning RP device shall be repaired or replaced within 30 days of discovery, and use of all supply lines associated with the RP device shall cease until repair or replacement has been completed. Copies of the inspection and maintenance records and test results for each RP device associated with the backflow prevention program shall be submitted to the department annually in the monitoring reports due by May 1.

[Q:] O. Supply well protection. With the exception of monitoring wells, all wells located within the land application area of a dairy facility shall have a surface pad constructed in accordance with the recommendations of Subsection G of 19.27.4.29 NMAC and a permanent well cap or cover pursuant to Subsection I of 19.27.4.29 NMAC.

[20.6.6.21 NMAC - N, 01/31/2011; A, 12/31/2011]

20.6.6.23 GROUND WATER MONITORING REQUIREMENTS FOR ALL DAIRY FACILITIES:

A. Monitoring wells - required locations. A permittee shall monitor ground water quality hydrologically downgradient of each source of ground water contamination: wastewater, stormwater, and combination wastewater/stormwater impoundments, and fields within the land application area. Monitoring wells shall be located pursuant to this section to detect an exceedance(s) or a trend towards exceedance(s) of the ground water standards at the earliest possible occurrence, so that source control or abatement may be implemented as soon as possible.

(1) **Ground water monitoring - wastewater impoundments.** A minimum of one monitoring well shall be located hydrologically downgradient and within 75 feet (measured as horizontal map distance) of the top inside edge of each wastewater impoundment. For existing dairy facilities, this ground water monitoring requirement additionally applies to wastewater impoundments that received wastewater as authorized by the most recent discharge permit issued prior to the effective date of the dairy rule but are not proposed for use under the first discharge permit renewal following the effective date of the dairy rule.

(a) For a new dairy facility, monitoring wells shall be installed before discharging at the dairy facility.

(b) For an existing dairy facility, monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

(c) A permittee constructing a new impoundment at an existing dairy facility shall install the monitoring well(s) required to monitor ground water hydrologically downgradient of the impoundments before discharging wastewater to the impoundment or within 120 days of the completion of the impoundment, whichever occurs first.

(2) **Ground water monitoring - combination wastewater/stormwater impoundments.** A minimum of one monitoring well shall be located hydrologically downgradient and within 75 feet (measured as horizontal map distance) of the top inside edge of each combination wastewater/stormwater impoundment. For existing dairy facilities, this ground water monitoring requirement additionally applies to combination wastewater/stormwater impoundments that received wastewater or stormwater as authorized by the most recent discharge permit issued prior to the effective date of the dairy rule but are not proposed for use under the first discharge permit renewal following the effective date of the dairy rule.

(a) For a new dairy facility,

monitoring wells shall be installed before placing any livestock at the dairy facility.

(b) For an existing dairy facility, monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

(c) A permittee constructing a new impoundment at an existing dairy facility shall install the monitoring well(s) required to monitor ground water hydrologically downgradient of the impoundment before discharging wastewater to the impoundment, before collecting stormwater in the impoundment or within 120 days of the completion of the impoundment, whichever occurs first.

(3) **Ground water monitoring - stormwater impoundments.** A minimum of one monitoring well shall be located hydrologically downgradient and within 75 feet (measured as horizontal map distance) of the top inside edge of each stormwater impoundment. For existing dairy facilities, this ground water monitoring requirement additionally applies to stormwater impoundments that received stormwater as authorized by the most recent discharge permit issued prior to the effective date of the dairy rule but are not proposed for use under the first discharge permit renewal following the effective date of the dairy rule.

(a) For a new dairy facility, monitoring wells shall be installed before placing any livestock at the dairy facility.

(b) For an existing dairy facility, monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

(c) A permittee constructing a new impoundment at an existing dairy facility shall install the monitoring well(s) required to monitor ground water hydrologically downgradient of the impoundment before collecting stormwater in the impoundment(s) or within 120 days of the completion of the impoundment, whichever occurs first.

(4) **Ground water monitoring - land application area.** Monitoring wells intended to monitor ground water hydrologically downgradient of fields within the land application area shall be installed as follows.

(a) **Flood irrigation.** Ground water monitoring shall be performed hydrologically downgradient of each flood irrigated field or grouping of contiguous flood irrigated fields. For every 40 acres or less of a single flood irrigated field or a single grouping of contiguous flood irrigated fields, a minimum of one monitoring well shall be located hydrologically downgradient and within 50 feet (measured as horizontal map distance) of the downgradient boundary of the

single field or single grouping of contiguous fields. Flood irrigated fields separated by ditch irrigation systems, acequias and drains shall be considered contiguous for the purpose of this subsection. For existing dairy facilities, this ground water monitoring requirement additionally applies to single fields or single groupings of contiguous flood irrigated fields that received wastewater or stormwater as authorized by the most recent discharge permit issued prior to the effective date of the dairy rule but are not proposed for use under the first discharge permit renewal following the effective date of the dairy rule.

(i) For a new dairy facility, monitoring wells shall be installed before placing livestock at the dairy facility.

(ii) For an existing dairy facility, monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

(iii) A permittee activating a new flood irrigated field at an existing dairy facility shall install the monitoring well(s) required to monitor ground water hydrologically downgradient of the field before applying wastewater or stormwater to the field.

(b) **Sprinkler or drip irrigation.** Ground water monitoring shall be performed hydrologically downgradient of each sprinkler or drip irrigated field, or grouping of contiguous sprinkler or drip irrigated fields. For every 160 acres or less of a single sprinkler or drip irrigated field, or a single grouping of 160 contiguous acres of sprinkler or drip irrigated fields, a minimum of one monitoring well shall be located hydrologically downgradient and within 50 feet (measured as horizontal map distance) of the downgradient boundary of the single field or single grouping of contiguous fields. Sprinkler or drip irrigated fields separated by ditch irrigation systems, acequias and drains shall be considered contiguous for the purpose of this subsection. For existing dairy facilities, this ground water monitoring requirement additionally applies to single fields or single groupings of contiguous sprinkler or drip irrigated fields that received wastewater or stormwater as authorized under the most recent discharge permit issued prior to the effective date of the dairy rule but are not proposed for use under the first discharge permit renewal following the effective date of the dairy rule.

(i) For a new dairy facility, monitoring wells shall be installed before placing livestock at the dairy facility.

(ii) For an existing dairy facility, monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

(iii) A permittee activating a new sprinkler or drip irrigated field at an existing dairy facility shall install the monitoring well(s) required to monitor ground water hydrologically downgradient of the field before applying wastewater or stormwater to the field.

(c) **Crop harvest by grazing.** Notwithstanding the requirements of Subparagraphs (a) and (b) of this paragraph, a minimum of one monitoring well(s) shall be located hydrologically downgradient and within 50 feet (measured as horizontal map distance) of the downgradient boundary of each field where grazing is proposed in a nutrient management plan (NMP) as an alternative to, or in conjunction with, crop removal by mechanical harvest.

(5) **Ground water monitoring - upgradient.** A minimum of one monitoring well shall be located hydrologically upgradient of all ground water contamination sources at a dairy facility in order to establish ground water quality conditions at a location not likely to be affected by contamination sources at the dairy facility.

(a) For a new dairy facility, monitoring wells shall be installed before placing livestock at the dairy facility.

(b) For an existing dairy facility, monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

(6) **Use of existing monitoring wells.** A monitoring well in existence before the effective date of the dairy rule shall be approved for ground water monitoring at a dairy facility provided all of the following requirements are met.

(a) The monitoring well is located at the location previously approved by the department.

(b) The monitoring well:

(i) if intended to monitor ground water quality near a contamination source, is located downgradient of the source based on current hydrologic conditions and is located no more than 100 feet hydrologically downgradient (measured as a horizontal map distance) from the contamination source; or

(ii) if intended to monitor ground water quality at a location not likely to be affected by contamination sources, is located hydrologically upgradient of sources at the dairy facility.

(c) The monitoring well is constructed with a screen length consistent with the construction requirements of this section or an alternative screen length previously approved by the department, and the screened interval intersects with the most-shallow ground water, and

(i) the alternative screen length is no greater than 30 feet; or

(ii) the monitoring well

has a water column within the screened interval of no more than 25 feet in length based upon the most recent ground water level obtained with a water level measuring device pursuant to 20.6.6.23 NMAC.

(d) The monitoring well construction log, the scaled dairy facility map and the ground water elevation contour map, and a copy of the department's written approval of an alternate screen length or recent ground water level data, as appropriate, is submitted with the application for a renewed or renewed and modified discharge permit verifying that the requirements of Subparagraphs (a), (b), and (c) of this paragraph are met.

(7) **Exceptions to monitoring well requirements.** When appropriate, based on the documented ground water flow direction, one monitoring well may be authorized by a discharge permit to monitor ground water hydrologically downgradient of more than one contamination source under any of the following circumstances.

(a) Contiguous impoundments are oriented along a line that is parallel or approximately parallel to the direction of ground water flow beneath the impoundments.

(b) Adjacent impoundments are oriented along a line that is parallel or approximately parallel to the direction of ground water flow beneath the impoundments and separated by a distance of 50 feet or less as measured from the top inside edge of one impoundment to the nearest top inside edge of the adjacent impoundment.

(c) Adjacent or adjacent groupings of contiguous sprinkler or drip irrigated fields are oriented along a line that is parallel or approximately parallel to the direction of ground water flow beneath the fields and the average depth-to-most-shallow ground water measured in on-site monitoring wells pursuant to Subsection F of this section is 300 feet or greater. Where monitoring wells do not exist, depth-to-most-shallow ground water shall be determined pursuant to Subsection X of 20.6.6.20 NMAC. A monitoring well(s) installed hydrologically downgradient of a sprinkler or drip irrigated field or a grouping of sprinkler or drip irrigated fields pursuant to Paragraph (4) of this subsection may be authorized by a discharge permit to monitor ground water hydrologically downgradient of not more than two adjacent sprinkler or drip irrigated fields or adjacent groupings of sprinkler or drip irrigated fields.

(8) **Requirement for third monitoring well.** If fewer than three monitoring wells are needed to satisfy the ground water monitoring requirements of Paragraphs (1) through (7) of this subsection, a third monitoring well shall be installed within 75 feet of the contamination source and in a location alternate to the

downgradient monitoring well required by this subsection. The third monitoring well shall be installed in an alternative location that allows for the determination of ground water flow direction pursuant to this section.

B. Monitoring wells - location proposals. An applicant or permittee shall identify monitoring well locations in the application for a new, renewed or modified discharge permit pursuant to Subsection A of this section, and shall include the following information.

(1) The location of each monitoring well relative to the contamination source it is intended to monitor shall be indicated on the scaled map required by Subsection U of 20.6.6.20 NMAC.

(2) A written description of the specific location for each monitoring well including the horizontal map distance (in feet) and compass bearing of each monitoring well from the top inside edge of the impoundment berm or edge of the field it is intended to monitor.

(3) The ground water flow direction beneath the dairy facility used to determine the monitoring well location(s), including supporting documentation used to determine ground water flow direction.

C. Monitoring wells - identification tags. A permittee shall identify all monitoring wells required by the dairy rule with a well identification tag. For above-grade wells, the tag shall be affixed to the exterior of the steel well shroud using rivets, bolts or a steel band. For wells finished below-grade, the tag shall be placed inside the well vault next to the well riser. The tag shall be:

(1) made of aluminum;

(2) at least two inches by four inches in size;

(3) for monitoring wells installed after the effective date of the dairy rule, the tag shall be engraved with:

(a) the discharge permit number;

(b) the well identification nomenclature specified in a discharge permit;

(c) the name and New Mexico well driller license number of the well driller who drilled the well; and

(d) the month and year of well installation; and

(4) for monitoring wells installed before the effective date of the dairy rule and satisfying the requirements of Paragraph (6) of Subsection A of this section, the tag shall be engraved with:

(a) the discharge permit number;

(b) the well identification nomenclature specified in a discharge permit; and

(c) if available, the name and New Mexico well driller license number of the well driller who drilled the well, and the month and year of well installation.

D. Monitoring wells - construction and completion. A permittee shall construct monitoring wells pursuant to 19.27.4 NMAC and the following requirements.

(1) All well drilling activities shall be performed by an individual with a current and valid well driller license issued by the state of New Mexico pursuant to 19.27.4 NMAC.

(2) The well driller shall employ drilling methods that allow for accurate determinations of water table locations. All drill bits, drill rods, and down-hole tools shall be thoroughly cleaned immediately before drilling. The borehole diameter shall allow a minimum annular space of two inches between the outer circumference of the well materials (casing or screen) and the borehole wall to allow for the emplacement of sand and sealant.

(3) After completion, the well shall be allowed to stabilize for a minimum of 12 hours before development is initiated.

(4) The well shall be developed so that formation water flows freely through the screen and is not turbid, and all sediment and drilling disturbances are removed from the well.

(5) Schedule 40 (or heavier) polyvinyl chloride (PVC) pipe, stainless steel pipe, or carbon steel pipe shall be used as casing. The casing shall have an inside diameter not less than two inches. The casing material selected for use shall be compatible with the anticipated chemistry of the ground water and appropriate for the contaminants of interest at the dairy facility. The casing material and thickness selected for use shall have sufficient collapse strength to withstand the pressure exerted by grouts used as annular seals and thermal properties sufficient to withstand the heat generated by the hydration of cement-based grouts.

(6) Casing sections shall be joined using welded, threaded, or mechanically locking joints; the method selected shall provide sufficient joint strength for the specific well installation.

(7) The casing shall extend from the top of the screen to at least one foot above ground surface. The top of the casing shall be fitted with a removable cap, and the exposed casing shall be protected by a locking steel well shroud. The shroud shall be large enough in diameter to allow easy access for removal of the cap. Alternatively, monitoring wells may be completed below grade. In this case, the casing shall extend from the top of the screen to six to twelve inches below the ground surface; the monitoring wells shall be sealed with locking, expandable well plugs; a flush-mount, watertight well vault that is rated to withstand traffic loads shall be emplaced around the wellhead; and the cover shall be secured with at least one bolt. The vault

cover shall indicate that the wellhead of a monitoring well is contained within the vault.

(8) A 20-foot section (maximum) of continuous well screen shall be installed across the water table. Screen shall consist of continuous-slot, machine slotted, or other manufactured schedule 40 (or heavier) PVC or stainless steel. Screens created by cutting slots into solid casing with saws or other tools shall not be used. The screen material selected for use shall be compatible with the anticipated chemistry of the ground water and appropriate for the contaminants of interest at the dairy facility. The screen slot size shall be selected to retain 90 percent of the filter pack.

(a) Requests for a 30-foot section of continuous well screen may be authorized by a discharge permit when the most recent two years of ground water level data demonstrates a declining water level trend of at least two feet per year. Data supporting ground water levels shall be specific to monitoring wells located at the dairy facility and obtained with a water level measuring device as required by Subsection F of this section.

(b) Requests for a 30-foot section of continuous well screen shall be submitted to the department in the application for a new, renewed or modified discharge permit.

(9) Screen sections shall be joined using welded, threaded, or mechanically locking joints. The method selected shall provide sufficient joint strength for the specific well installation and shall not introduce constituents that may reasonably be considered contaminants of interest at the dairy facility. A cap shall be attached to the bottom of the well screen. Sumps (i.e., casing attached to the bottom of a well screen) shall not be installed.

(10) The bottom of the screen shall be installed no more than 15 feet below the water table, or no more than 25 feet below the water table when additional screen length is authorized by a discharge permit. The top of the well screen shall be positioned not less than five feet above the water table. The well screen slots shall be appropriately sized for the formation materials.

(11) Casing and well screen shall be centered in the borehole by installing centralizers near the top and bottom of the well screen.

(12) A filter pack shall be installed around the screen by filling the annular space from the bottom of the screen to two feet above the top of the screen with clean silica sand. The filter pack shall be properly sized to exclude the entrance of fine sand, silt, and clay from the formation into the monitoring well. For wells deeper than 30 feet, the sand shall be emplaced by a tremmie pipe. The well shall be surged or bailed to settle the filter pack and additional sand added,

if necessary, before the bentonite seal is emplaced.

(13) A bentonite seal shall be constructed immediately above the filter pack by emplacing bentonite chips or pellets (three-eighths inch in size or smaller) in a manner that prevents bridging of the chips/pellets in the annular space. The bentonite seal shall be three feet in thickness and hydrated with clean water. Adequate time shall be allowed for expansion of the bentonite seal before installation of the annular space seal.

(14) The annular space above the bentonite seal shall be sealed with cement grout or bentonite-based sealing material acceptable to the state engineer in accordance with 19.27.4 NMAC. A tremmie pipe shall be used to emplace the annular space seal (flow by gravity or pumping through the pipe) if the total depth of the well is greater than 20 feet from the land surface. Annular space seals shall extend from the top of the bentonite seal to the ground surface (for wells completed above grade) or to a level three to six inches below the top of casing (for wells completed below grade).

(15) A concrete pad (two-foot minimum radius, four-inch minimum thickness) shall be poured around the shroud or well vault and wellhead. The concrete and surrounding soil shall be sloped to direct rainfall and runoff away from the wellhead.

E. Monitoring wells - office of the state engineer requirements. Should a well permit for a monitoring well be required by the office of the state engineer, the permittee shall obtain the permit prior to well drilling.

F. Ground water sample collection procedure. A permittee shall perform all ground water sample collection, preservation, transport and analysis according to the following procedure.

(1) Depth-to-most-shallow ground water shall be measured from the top of well casing at point of survey to the nearest 0.01 feet using an electronic water level indicator consisting of dual conductor wire encased in a cable or tape graduated to 0.01 feet, a probe attached to the end of the conductor wire, and a visual or audible indicator.

(2) Monitoring wells shall be purged before sample collection by one of the following methods.

(a) Three well volumes of water shall be purged from the well before sample collection.

(b) The monitoring well shall be purged until measurements of indicator parameters (pH, specific conductance, and temperature) have stabilized. Indicator parameters shall be measured periodically during purging. A parameter stabilization log shall be kept during each sampling event for each monitoring well and include: date; water quality indicator parameter

measurements; time for all measurements; and the purge volume extracted. Indicator parameters are considered stable when three consecutive readings made no more than five minutes apart fall within the following ranges: temperature plus or minus 10 percent; pH plus or minus 0.5 units; specific conductance plus or minus 10 percent.

(3) Following purging and immediately before sample collection the following field parameters shall be measured and recorded: pH, specific conductance, and temperature.

(4) In-line flow-through cells shall be disconnected or by-passed during sample collection, if used during purging.

(5) Samples from the well shall be obtained, prepared, preserved and transported to an analytical laboratory for analysis pursuant to the methods authorized by Subsection B of 20.6.6.24 NMAC.

G. Ground water sampling and reporting - routine. A permittee shall collect ground water samples quarterly from all monitoring wells required by Subsection A of this section and Subsection C of 20.6.6.27 NMAC. Samples shall be analyzed for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, sulfate and total dissolved solids pursuant to Subsection B of 20.6.6.24 NMAC. A permittee shall submit to the department in the quarterly monitoring reports the depth-to-most-shallow ground water, the field parameter measurements, the parameter stabilization log (if applicable), the analytical results (including the laboratory quality assurance and quality control summary report) and a map showing the location and number of each well in relation to the contamination source it is intended to monitor.

H. Ground water sampling - new monitoring wells. A permittee shall collect ground water samples from all newly installed monitoring wells. Samples shall be analyzed for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, sulfate and total dissolved solids pursuant to Subsection B of 20.6.6.24 NMAC.

(1) Samples shall be collected from the newly installed monitoring wells at new dairy facilities before placing livestock at the dairy facility.

(2) Samples shall be collected from the newly installed monitoring wells at existing dairy facilities within 150 days of the effective date of the discharge permit.

(3) For dairy facilities installing a new monitoring well during the term of a discharge permit, during construction of a new impoundment, or as a result of required corrective actions, samples shall be collected from the newly installed monitoring wells within 30 days of well completion.

I. Monitoring well survey and ground water flow determination. A permittee shall survey monitoring wells to a

U.S. geological survey (USGS) benchmark. Survey data shall include northing, easting and elevation to the nearest hundredth of a foot or shall be in accordance with the "Minimum Standards for Surveying in New Mexico", 12.8.2 NMAC. A survey elevation shall be established at the top-of-casing, with a permanent marking indicating the point of survey. The survey shall be completed and bear the seal and signature of a licensed New Mexico professional surveyor. Depth-to-most-shallow ground water shall be measured from the point of survey to the nearest hundredth of a foot in all surveyed wells pursuant to Subsection F of this section, and the data shall be used to develop a map showing the location of all monitoring wells and the direction and gradient of ground water flow at the dairy facility.

(1) For a new dairy facility, monitoring wells shall be surveyed before placing livestock at the dairy facility.

(2) For an existing dairy facility, monitoring wells not previously surveyed in a manner consistent with the requirements of this subsection and Subsection B of 20.6.6.17 NMAC shall be surveyed within 150 days of the effective date of the discharge permit.

J. Monitoring well completion report. A permittee shall submit to the department a monitoring well completion report pertaining to all monitoring wells. For a new dairy facility, the report shall be submitted before placing livestock at the dairy facility. For an existing dairy facility, the report shall be submitted within 180 days after the effective date of the discharge permit or within 60 days of completion as specified in a discharge permit. The report shall contain the following information.

(1) Construction and lithologic logs for the new monitoring wells including well record information specified by 19.27.4 NMAC.

(2) Depth-to-most-shallow ground water measured in each new and existing monitoring well.

(3) Survey data and a survey map showing the locations of each new and existing monitoring well and a ground water elevation contour map developed pursuant to Subsection L of this section.

(4) Analytical results of ground water samples collected from the new monitoring wells, including laboratory quality assurance and quality control summary reports, and field parameter measurements.

K. Monitoring well survey report - existing monitoring wells. For a dairy facility required to survey existing monitoring wells pursuant to this section a permittee shall submit the monitoring well survey report to the department within 180 days of the effective date of the discharge

permit. The report shall contain the depth-to-most-shallow ground water measured in each monitoring well, a surveyed map showing the locations of the monitoring wells, and the direction and gradient of ground water flow at the dairy facility.

L. Ground water elevation contour maps. A permittee shall develop ground water elevation contour maps on a quarterly basis using data associated with all monitoring wells used for ground water monitoring at the dairy facility. Top of casing elevation data, obtained from monitoring well surveys completed pursuant to this section and quarterly depth-to-most-shallow ground water measurements in monitoring wells, shall be used to calculate ground water elevations at monitoring well locations. Ground water elevations between monitoring well locations shall be estimated using common interpolation methods. Ground water elevations shall be expressed in feet. A contour interval appropriate to the data shall be used, but in no case shall the interval be greater than two feet. Ground water elevation contour maps shall depict the ground water flow direction, using arrows, based on the orientation of the ground water elevation contours, and the location and identification of each monitoring well, impoundment, and field within the land application area. A permittee shall submit ground water elevation contour maps to the department in the quarterly monitoring reports.

M. Monitoring well inspection. The department may perform downhole inspections of all monitoring wells. At least 60 days before the inspection, the department shall provide written notice to the permittee by certified mail stating the inspection date and identifying the monitoring wells to be inspected; the 60 day notification period shall start upon the date of postal notice. At least 48 hours before the department's inspection, the permittee shall remove all existing dedicated pumps to allow adequate settling time of sediment agitated from pump removal. If a permittee decides to install a dedicated pump in a monitoring well, the permittee shall notify the department so that the department may have the opportunity to perform a downhole well inspection before pump installation. Alternatively, a permittee may employ a third party to perform downhole monitoring well inspections, provided the department is given at least 60 days written notice by certified mail so that a department representative may be on-site to observe the inspection.

(1) The third party shall make a video recording of the monitoring well inspection using a downhole camera and perform the inspection in accordance with the following requirements.

(a) Depth-to-most-shallow ground

water shall be obtained from the well using an electronic water level indicator pursuant to Subsection F of this section, prior to inspection with a downhole camera. Care shall be taken when obtaining this measurement so as to not disturb sediments in the well.

(b) If ground water sample collection is planned during the inspection event, the downhole camera shall be used to inspect a monitoring well prior to sampling the well.

(c) Prior to well inspection with a downhole camera, at the top of the well casing, the totalizing reading on the downhole camera shall be zeroed, or a value other than zero shall be recorded as an initial reading.

(d) All measurements and totalizing readings (with the exception of depth-to-most-shallow ground water obtained pursuant to Subsection F of this section shall be obtained to the nearest 0.1 feet. Downhole cameras that use a measurement system other than 0.1-foot increments are authorized for use; however the permittee shall report the direct measurement/reading obtained and the calculated conversion in 0.1 feet on the written log.

(e) All measurements and totalizing readings shall be obtained at the top of the well casing.

(f) The downhole camera shall be lowered into the monitoring well at a consistent speed that allows for clear video capture and does not disturb sediments in the well.

(g) Lowering of the downhole camera shall be paused long enough to clearly identify totalizing readings at the following points: depth-to-most-shallow ground water; depth of the top of the screened interval; depth of the bottom of screened interval; and the bottom of the well.

(2) The permittee shall submit written and video monitoring well camera logs for every monitoring well viewed with a downhole camera, along with a copy of an up-to-date facility map showing the location and identification of each monitoring well. The permittee shall submit the logs to the department within 60 days following the date of the well inspection.

(a) The written monitoring well camera log shall include the following general information: name of the dairy facility; discharge permit number; permittee's name; monitoring well identification; date and time of the monitoring well camera inspection; location of the monitoring well relative to a source or facility landmark; camera manufacturer and model; names of camera operator and any technical assistants; diameter of the casing (in inches); and a description of the physical condition of the well's concrete pad, shroud, casing and screened interval. The written

log shall include measurements of distance from top of the well casing to the surface of the concrete pad; height from ground surface to the top of the concrete pad; and depth-to-most-shallow ground water measured using an electronic water level indicator pursuant to Subsection F of this section. The written log shall also include totalizing readings obtained from the downhole camera including the initial reading at the top of the well casing; depth-to-most-shallow ground water using the borehole camera; depth of the top of the screened interval; depth of the bottom of screened interval; and the bottom of the well (total depth). The length of the screened interval shall be calculated by subtracting the depth of the top of the screened interval from the depth of the bottom of screened interval and recorded on the log.

(b) The video monitoring well camera log shall display the name of the dairy facility; discharge permit number; permittee's name; monitoring well identification; date and time of the monitoring well camera inspection; and the totalizing readings required by Subparagraph (g) of Paragraph (1) of this subsection. The permittee shall submit the video to the department in Motion Picture Experts Group (MPEG) video format on a compact disc (CD) or digital versatile disc (DVD).

N. Proposed location of monitoring wells - dispute resolution. If the department provides a notice of technical deficiency pursuant to Subsection G of 20.6.6.10 NMAC due to a disagreement with the number or location of monitoring wells proposed in the application, or if the department notifies a permittee to replace a monitoring well pursuant to Subsection C of 20.6.6.27 NMAC, the applicant or permittee may notify the secretary by certified mail, sent within 30 days after the date of postal notice of the department's notice, that the applicant or permittee invokes dispute resolution under this subsection. Upon such notice, the department, as represented by the secretary, deputy secretary, or division director and the applicant or permittee shall meet in person within 30 days and shall attempt in good faith to resolve the dispute. [20.6.6.23 NMAC - N, 01/31/2011; A, 12/31/2011]

20.6.6.25 ADDITIONAL MONITORING REQUIREMENTS FOR DAIRY FACILITIES WITH A LAND APPLICATION AREA:

A. Volume of wastewater and wastewater/stormwater land applied - measurement and reporting. A permittee shall measure all wastewater discharges from a wastewater or combination wastewater/stormwater impoundment to each field within the land application area using flow meters. A permittee shall maintain a log recording

the date and location of each discharge, flow meter readings immediately prior to and after each discharge, and the calculated total volume of each discharge reported in gallons and acre-feet. A permittee shall submit a copy of the log entries including units of measurement to the department in the quarterly monitoring reports.

B. Volume of stormwater land applied - measurement and reporting. A permittee shall measure all stormwater applications from a stormwater impoundment to each field within the land application area using flow meters. A permittee shall maintain a log recording the date and location of each application, flow meter readings immediately prior to and after each application, and the calculated total volume of each application reported in gallons and acre-feet. A permittee shall submit a copy of the log entries including units of measurement to the department in the quarterly monitoring reports.

C. Wastewater to be land applied - sampling and reporting. A permittee shall collect and analyze wastewater samples on a quarterly basis for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, total sulfur and total dissolved solids pursuant to Subsection B of 20.6.6.24 NMAC. ~~[Samples shall be collected during active milking from a location between the manure solids separator(s) and wastewater impoundment(s) for each separator associated with an individual parlor. Wastewater samples shall be collected from the sampling location(s) proposed in the application for a new, renewed and modified discharge permit, and specified in the discharge permit.]~~ Representative samples shall be collected from the wastewater impoundments. The representative samples shall consist of eight samples taken from eight different locations evenly distributed throughout the impoundment. A permittee shall submit the analytical results to the department in the quarterly monitoring reports.

D. Manure solids - nitrogen content. The nitrogen content of the manure solids applied to each field within the land application area shall be estimated at 25 pounds of nitrogen per ton. Should a permittee choose to use actual nitrogen content values of on-site manure solids, the permittee shall collect a composite sample on an annual basis. The composite sample shall consist of a minimum of 30 sub-samples collected on the same day and thoroughly mixed. Manure samples shall be analyzed for total Kjeldahl nitrogen and moisture content. The permittee shall submit the analytical results to the department in the quarterly monitoring reports.

E. Irrigation water - sampling, volume applied, and reporting. A permittee shall monitor irrigation wells

used to supply fresh water to the fields within the land application area to account for additional potential nitrogen supplied to the land application area in the following manner.

(1) Each irrigation well shall be identified in association with the field(s) to which it supplies fresh water.

(2) An annual sample of irrigation water supplied from each well shall be collected and analyzed for nitrate as nitrogen and total Kjeldahl nitrogen, pursuant to Subsection B of 20.6.6.24 NMAC.

(3) The annual volume of irrigation water applied to each field within the land application area shall be estimated for each well.

(4) The permittee shall submit the analytical results and the estimated annual volume of irrigation water applied from each well to each field within the land application area to the department in the monitoring reports due by May 1.

F. Fertilizer application reporting. A permittee shall maintain a log of all additional fertilizer(s) applied to each field within the land application area. The log shall contain the date of fertilizer application, the type and form of fertilizer, fertilizer analysis, the amount of fertilizer applied in pounds per acre to each field, and the amount of nutrients applied in pounds per acre to each field. The permittee shall submit a copy of the log entries to the department in the quarterly monitoring reports.

G. Land application data sheets. A permittee shall complete land application data sheets for each field within the land application area to document the crop grown and amount of total nitrogen applied from wastewater, stormwater, manure solids, composted material, irrigation water and other additional fertilizer(s), and the residual soil nitrogen and nitrogen credits from leguminous crops. The permittee shall submit a land application data sheet or a statement that land application did not occur to the department in the quarterly monitoring reports. The land application data sheet shall include the following elements from the previous six quarters.

(1) The total monthly volume, reported in acre-feet, of wastewater and stormwater applied to each field within the land application area. Total monthly volumes shall be obtained from flow meter readings of each application pursuant to Subsections A and B of this section.

(2) The total nitrogen concentration of wastewater and stormwater obtained from the corresponding quarterly analyses collected pursuant to Subsection C of this section and Subsection D of 20.6.6.24 NMAC.

(3) The total monthly volume, reported in tons per acre, of manure solids applied to each field within the land

application area.

(4) The total nitrogen content of the manure solids estimated at 25 pounds of nitrogen per ton or determined from analysis of manure solids samples collected pursuant to Subsection D of this section.

(5) The total nitrogen concentration within the irrigation water and the amount of irrigation water applied pursuant to Subsection E of this section.

(6) The amount of nitrogen reported in pounds per acre from additional fertilizer(s) applied pursuant to Subsection F of this section.

(7) The amount of residual soil nitrogen and nitrogen from leguminous crops credited to each field within the land application area pursuant to Subsections K and L of this section.

H. Crop yield documentation. A permittee shall submit crop yield documentation and plant and harvest dates of each crop grown to the department in the quarterly monitoring reports. Crop yield documentation shall consist of copies of scale-weight tickets or harvest summaries based on scale-weights.

I. Nitrogen concentration of harvested crop. A permittee shall determine the total nitrogen concentration of each harvested crop. A composite sample consisting of 15 sub-samples of plant material shall be taken from each field during the final harvest of each crop grown per year. Samples shall be analyzed for percent total nitrogen and percent dry matter. A permittee shall submit the analytical reports to the department in the quarterly monitoring reports.

J. Nitrogen removal summary of harvested crop. A permittee shall develop a nitrogen removal summary to determine total nitrogen removed by each crop grown on each field within the land application area. Nitrogen removal shall be determined using crop yield and total nitrogen concentration information collected pursuant to Subsections H and I of this section. A permittee shall submit the summary to the department in the quarterly monitoring reports.

K. Soil sampling - initial event in a discharge permit term. A permittee shall collect composite soil samples from each field within the land application area for the first soil sampling event during the first year following the effective date of the discharge permit. Composite soil samples shall be collected in the five-month period between September 1 and January 31 for all fields regardless of whether the field is cropped, remains fallow, or has received wastewater or stormwater. One surface composite soil sample (first-foot) and two sub-surface composite soil samples (second-foot and third-foot) shall be collected from each field. Composite

soil samples shall be collected and analyzed according to the following procedure.

(1) Each surface and sub-surface soil sample shall consist of a single composite of 15 soil cores collected randomly throughout each field. Should a field consist of different soil textures (i.e., sandy and silty clay), a composite soil sample shall be collected from each soil texture within each field.

(2) Surface soil samples (first-foot) shall be collected from a depth of 0 to 12 inches.

(3) Each second-foot sub-surface soil sample shall be collected from a depth of 12 to 24 inches.

(4) Each third-foot sub-surface soil sample shall be collected from a depth of 24 to 36 inches.

(5) Each surface and sub-surface composite sample shall be analyzed for pH, electrical conductivity, total Kjeldahl nitrogen, nitrate as nitrogen, chloride, organic matter, potassium, phosphorus, sodium, calcium, magnesium, sulfate, soil texture, and sodium adsorption ratio.

(6) pH, electrical conductivity, sodium, calcium, magnesium, and sulfate shall be analyzed using a saturated paste extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Phosphorus shall be analyzed using the Olsen sodium bicarbonate method in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Total Kjeldahl nitrogen, chloride, organic matter, potassium, soil texture, and sodium adsorption ratio shall be analyzed in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC.

(7) The permittee shall submit the analytical results and a map showing the fields and the sampling locations within each field to the department in the monitoring report due by May 1 following the effective date of the discharge permit.

L. Soil sampling - routine. Beginning in the year following the initial soil sampling required by this section, the permittee shall collect annual soil samples from each field within the land application area that has received or is actively receiving wastewater or stormwater. Composite soil samples shall be collected in the five-month period between September 1 and January 31. For those fields that have never before received wastewater, the permittee shall collect soil samples immediately before initial wastewater application and annually thereafter. Once a field has received wastewater it shall be sampled annually regardless of whether the field is cropped,

remains fallow, or has recently received wastewater or stormwater. One surface composite soil sample (first-foot) and two sub-surface composite soil samples (second-foot and third-foot) shall be collected from each field. Composite soil samples shall be collected and analyzed according to the following procedure.

(1) Each surface and sub-surface soil sample shall consist of a single composite of 15 soil cores collected randomly throughout each field. Should a field consist of different soil textures (i.e., sandy and silty clay), a composite soil sample shall be collected from each soil texture within each field.

(2) Surface soil samples (first-foot) shall be collected from a depth of 0 to 12 inches.

(3) Each second-foot sub-surface soil sample shall be collected from a depth of 12 to 24 inches.

(4) Each third-foot sub-surface soil sample shall be collected from a depth of 24 to 36 inches.

(5) Surface soil samples shall be analyzed for pH, electrical conductivity, nitrate as nitrogen, chloride, organic matter, potassium, phosphorus, sodium, calcium, magnesium, and sodium adsorption ratio.

(6) Sub-surface soil samples shall be analyzed for electrical conductivity, nitrate as nitrogen, and chloride.

(7) pH, electrical conductivity, sodium, calcium, and magnesium shall be analyzed using a saturated paste extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Phosphorus shall be analyzed using the Olsen sodium bicarbonate method in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Nitrate as nitrogen shall be analyzed by a 2 molar KCl extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Chloride, organic matter, potassium, and sodium adsorption ratio shall be analyzed in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC.

(8) The permittee shall submit the analytical results and a map showing the fields and the sampling locations within each field to the department in the monitoring report due by May 1.

[20.6.6.25 NMAC - N, 01/31/2011; A, 12/31/2011]

20.6.6.27 CONTINGENCY REQUIREMENTS FOR ALL DAIRY FACILITIES:

A. Exceedance of ground water standards - all monitoring wells except impoundment monitoring wells. If the constituent concentration in a ground water sample and in [any-subsequent] the

next ground water sample collected from the same monitoring well intended to monitor a contamination source other than an impoundment exceeds one or more of the ground water standards of 20.6.2.3103 NMAC and exceeds the concentration of such constituent(s) in a ground water sample collected from the upgradient monitoring well, then the permittee shall take the following actions. For the purpose of this subsection, ground water samples obtained from the source monitoring well and the upgradient monitoring well that are used for comparison of constituent concentrations shall be collected within two days of each other, provided that if there is sufficient ground water quality data to demonstrate that samples from different periods should be compared, the department may allow such a comparison. If ground water quality data for the upgradient monitoring well are not submitted by the permittee, the ground water standards of 20.6.2.3103 NMAC shall be the applicable standard used to determine if the requirements of this subsection must be met. The contingency requirements of Paragraphs (1) and (2) of this subsection shall not apply if corrective action previously has been taken to address ground water contamination and constituent concentrations have stabilized or improved, but this exception shall no longer apply if a constituent concentration increases for two consecutive sampling events and exceeds its standard or the upgradient concentration. Once enacted the contingency requirements of this subsection apply until the permittee has fulfilled the requirements of this subsection and ground water monitoring pursuant to 20.6.6.23 NMAC confirms for a minimum of eight consecutive ground water sampling events that the standards of 20.6.2.3103 NMAC are not exceeded and the total nitrogen concentration in ground water is less than or equal to 10 milligrams per liter or until the department requires an abatement plan pursuant to Paragraph (3) of this subsection.

(1) A corrective action plan shall be submitted within 120 days of the subsequent sample analysis date unless a petition for variance is filed in accordance with Paragraph (2) of this subsection. The corrective action plan shall describe any repairs made to address the cause of the exceedance, and propose source control measures and a schedule for implementation. The implementation schedule shall include a schedule of all proposed corrective action activities and the date that corrective action will be completed. The department shall approve or disapprove the corrective action plan within 60 days of receipt. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. If the

department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised corrective action plan to the department within 60 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the corrective action plan within 60 days of receipt. If the department does not approve the revised corrective action plan, or if the permittee fails to submit a revised plan as required by this subsection, the department may pursue enforcement actions authorized by Section 74-6-10 NMSA 1978.

(2) The permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded. If such an investigation indicates that the source of the contamination is not the source intended to be monitored by the well, the permittee may petition within 120 days of the subsequent sample analysis date for a variance from the requirements of this section in accordance with 20.6.2.1210 NMAC. It is the permittee's burden to prove any claim that the source of the contamination is not the source intended to be monitored by the well. If the petition is denied the permittee shall submit a corrective action plan meeting the requirements of Paragraph (1) of this subsection within 60 days of the denial.

(3) The permittee may be required to submit an abatement plan proposal pursuant to 20.6.2.4106 NMAC within 60 days of written notice from the department. Abatement shall be performed pursuant to 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

B. Exceedance of ground water standards - impoundment monitoring well. If the constituent concentration in a ground water sample and in ~~[any subsequent]~~ the next ground water sample collected from a monitoring well intended to monitor an impoundment(s) exceeds one or more of the ground water standards of 20.6.2.3103 NMAC and exceeds the concentration of such constituent(s) in a ground water sample collected from the upgradient monitoring well, then the permittee shall enact one of the following measures. For the purpose of this subsection, ground water samples obtained from the impoundment monitoring well and the upgradient monitoring well that are used for comparison of constituent concentrations shall be collected within two days of each other, provided that if there is sufficient ground water quality data to demonstrate that samples from different periods should be compared, the department may allow such a comparison. If ground water quality data for the upgradient monitoring well are not submitted by the permittee, the ground water standard(s) of 20.6.2.3103 NMAC shall be the applicable standard(s) used to determine

if the requirements of this subsection must be met. The contingency requirements of Subparagraphs (a) through (c) of Paragraph (1) and Sub-subparagraphs (i) through (iii) of Sub-paragraph (a) of Paragraph (2) of this subsection shall not apply if corrective action previously has been taken to address ground water contamination and constituent concentrations have stabilized or improved, but this exception shall no longer apply if a constituent concentration increases for two consecutive sampling events and exceeds its standard or the upgradient concentration. Once enacted the contingency requirements of this subsection apply until the permittee has fulfilled the requirements of this subsection and ground water monitoring pursuant to 20.6.6.23 NMAC confirms for a minimum of eight consecutive ground water sampling events that the standards of 20.6.2.3103 NMAC are not exceeded and the total nitrogen concentration in ground water is less than or equal to 10 milligrams per liter or until the department requires an abatement plan pursuant to Subparagraph (d) of Paragraph (1) or Sub-subparagraph (iv) of Subparagraph (a) of Paragraph (2) of this subsection.

(1) **Pre-dairy rule liner not composed of 40/30-mil HDPE (minimum) or equivalent.** For impoundments using a liner installed prior to the effective date of the dairy rule and composed of a material that is not, at a minimum, 40-mil unreinforced HDPE, 30-mil reinforced HDPE, (or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance), the following actions shall be taken.

(a) A corrective action plan shall be submitted within 120 days of the subsequent sample analysis date unless a petition for variance is filed in accordance with Subparagraph (c) of this paragraph. The corrective action plan shall describe any repairs or changes in practices made to address the cause of the exceedance, and propose source control measures and a schedule for implementation. The implementation schedule shall include a schedule of all proposed corrective action activities and the date that corrective action will be completed. The department shall approve or disapprove the corrective action plan within 60 days of receipt. If the corrective action plan proposes actions to correct deficiencies with the liner, the proposed actions shall include the following items.

(i) A proposal for reconstruction and relining of an existing impoundment, or construction and lining of a new impoundment. Reconstruction or new construction shall be completed pursuant

to 20.6.6.17 NMAC within one year of the subsequent sample analysis date. If a new impoundment is constructed, the existing impoundment shall be permanently closed pursuant to 20.6.6.30 NMAC.

(ii) Reconstruction or construction plans and specifications for the impoundment shall be completed pursuant to 20.6.6.17 NMAC.

(b) Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised correction action plan to the department within 60 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the revised corrective action plan within 60 days of receipt. If the department does not approve the revised corrective action plan, or if the permittee fails to submit a revised plan as required by this subsection, the department may pursue enforcement actions authorized by Section 74-6-10 NMSA 1978.

(c) The permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded. If such an investigation indicates that the source of the contamination is not the impoundment intended to be monitored by the well, the permittee may petition within 120 days of the subsequent sample analysis date for a variance from the requirements of this section in accordance with 20.6.2.1210 NMAC. It is the permittee's burden to prove any claim that the source of the contamination is not the impoundment intended to be monitored by the well. If the variance is denied the permittee shall submit a corrective action plan meeting the requirements of Subparagraph (a) of this paragraph within 60 days of the denial.

(d) The permittee may be required to submit an abatement plan proposal pursuant to 20.6.2.4106 NMAC within 60 days of written notice from the department. Abatement shall be performed pursuant to 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

(2) **Dairy rule liner or pre-dairy rule liner composed of 40/30-mil (minimum) HDPE or equivalent.** For impoundments using a liner installed after the effective date of the dairy rule and composed of a material that is, at a minimum, 60-mil HDPE (or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance), or impoundments using a liner installed prior to the effective date of the dairy rule

and composed of a material that is, at a minimum, 40-mil unreinforced HDPE, 30-mil reinforced HDPE, (or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance), the following actions shall be taken.

(a) **Initial liner.** For impoundments where the existing liner is the initial liner installed, the following actions shall be taken.

(i) A corrective action plan shall be submitted within 120 days of the subsequent sample analysis date unless a petition for variance is filed in accordance with Sub-subparagraph (iii) of this subparagraph. The corrective action plan shall describe any repairs or changes in practices made to address the cause of the exceedance, and propose source control measures and a schedule for implementation. The implementation schedule shall include a schedule of all proposed corrective action activities and the date that corrective action will be completed. The department shall approve or disapprove the corrective action plan within 60 days of receipt. If the corrective action plan proposes actions to correct deficiencies with the liner, the proposed actions shall include repair or replacement of the existing liner, or construction and lining of a new impoundment. If liner repair is practicable, repairs shall be made pursuant to 20.6.6.17 NMAC or using a material that is equivalent to the existing liner with respect to material thickness and composition. Repairs shall be completed within 240 days of the subsequent sample analysis date. If liner repair is not practicable, the corrective action plan shall propose reconstruction and relining of the impoundment pursuant to 20.6.6.17 NMAC or construction and lining of a new impoundment pursuant to 20.6.6.17 NMAC within one year of the subsequent sample analysis date. Reconstruction or construction plans and specifications for the impoundment shall be completed pursuant to 20.6.6.17 NMAC and submitted with the corrective action plan. If a new impoundment is constructed the existing impoundment shall be closed pursuant to 20.6.6.30 NMAC.

(ii) Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised corrective action plan to the department within 60 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove

the revised corrective action plan within 60 days of receipt. If the department does not approve the revised corrective action plan, or if the permittee fails to submit a revised plan as required by this subsection, the department may pursue enforcement actions authorized by Section 74-6-10 NMSA 1978.

(iii) The permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded. If such an investigation indicates that the source of the contamination is not the impoundment intended to be monitored by the well, the permittee may petition within 120 days of the subsequent sample analysis date for a variance from the requirements of this section in accordance with 20.6.2.1210 NMAC. It is the permittee's burden to prove any claim that the source of the contamination is not the impoundment intended to be monitored by the well. If the variance is denied the permittee shall submit a corrective action plan meeting the requirements of Sub-subparagraph (i) of this subparagraph within 60 days of the denial.

(iv) The permittee may be required to submit an abatement plan proposal pursuant to 20.6.2.4106 NMAC within 60 days of written notification from the department. Abatement shall be performed pursuant to 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

(b) **Replacement liner.** If source control measures have been previously implemented such that the existing liner replaced a previously installed liner in an impoundment and ground water standard(s) of 20.6.2.3103 NMAC continue to be exceeded, such impoundments are authorized to continue to receive wastewater or stormwater pursuant to the following requirements.

(i) The permittee may be required to submit an abatement plan proposal pursuant to 20.6.2.4106 NMAC within 60 days of written notice from the department if abatement has not been previously implemented. Abatement shall be performed pursuant to 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

(ii) If the results of abatement activities indicate that the replacement liner does not successfully control the source of contamination, the department may modify the discharge permit pursuant to Subsection E of 20.6.2.3109 NMAC and include additional conditions pursuant to Subsection H of 20.6.6.10 NMAC. The additional conditions shall address, but are not limited to, further source control measures. The requirements of 20.6.6.15 NMAC shall apply to hearing requests on the proposed additional discharge permit conditions.

C. Monitoring well replacement. If information available to the department indicates that a monitoring well(s) required by 20.6.6.23 NMAC is not located hydrologically downgradient of the contamination source it is intended to monitor, is not completed pursuant to 20.6.6.23 NMAC or contains insufficient water to effectively monitor ground water quality, a permittee shall install a replacement monitoring well(s). The replacement monitoring well(s) shall be installed within 120 days of the date of postal notice of notification from the department and a survey of the replacement monitoring well(s) shall be performed within 150 days of the date of postal notice of notification from the department. The replacement monitoring well(s) shall be located, installed, completed, surveyed and sampled pursuant to 20.6.6.23 NMAC. The permittee shall develop a monitoring well completion report pursuant to Subsection J of 20.6.6.23 NMAC and submit it to the department within 180 days of the date of postal notice of notification from the department.

D. Exceedances of permitted maximum daily discharge volume. If the maximum daily discharge volume authorized by the discharge permit is exceeded by more than ten percent for any four average daily discharge volumes within any 12-week period, the permittee shall submit within 60 days of the fourth exceedance: a corrective action plan for reducing the discharge volume; or an application for a modified or renewed and modified discharge permit pursuant to 20.6.6.10 NMAC. Within 30 days of postal notice of department approval, the permittee shall initiate implementation of the corrective action plan.

E. Insufficient impoundment capacity. If a survey, capacity calculations, or settled solids thickness measurements, indicate an existing impoundment is not capable of meeting the capacity requirements required by Subsection D of 20.6.6.17 NMAC, then within 90 days of the effective date of the discharge permit the permittee shall submit a corrective action plan for department approval. The plan may include, but is not limited to, proposals for constructing an additional impoundment, reducing the discharge volume, removing accumulated solids, changing wastewater or stormwater management practices, or installing an advanced treatment system. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall

initiate implementation of the plan. Should the corrective action plan include removal of accumulated solids, solids shall be removed from the impoundment in a manner that is protective of the impoundment liner. The plan shall include the method of removal, and locations and methods for storage and disposal of the solids-slurry. If the plan proposes land application of the solids-slurry, the plan must also include the analytical results of total Kjeldahl nitrogen and chloride obtained from a representative sample of the solids-slurry to be applied. Notwithstanding Paragraph (6) of Subsection D of 20.6.6.17 NMAC, if a corrective action plan required under this subsection calls for construction of a new wastewater impoundment or improvement of an existing wastewater impoundment, and ground water quality standards have not been exceeded in monitoring wells installed to monitor the existing impoundment for the four quarters preceding submission of the corrective action plan, the permittee may propose and the department may approve a liner for the new wastewater impoundment or improvement of the existing impoundment consistent with the liner design approved by the department at the time of the last discharge permit issued by the department before the effective date of the dairy rule.

F. Inability to preserve required freeboard. If a minimum of two feet of freeboard cannot be preserved in the wastewater impoundment, the permittee shall submit a corrective action plan to the department for approval. The corrective action plan shall be submitted within 30 days of the date of the initial exceedance of the freeboard requirement. The plan may include, but is not limited to, proposals for constructing an additional impoundment, reducing the maximum daily discharge volume, changing wastewater management practices, or installing an advanced wastewater treatment system. The corrective action plan shall include actions to be immediately implemented to regain and maintain a minimum of two feet of freeboard until permanent corrective actions have been completed. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. Notwithstanding Paragraph (6) of Subsection D of 20.6.6.17 NMAC, if a corrective action plan required under this subsection calls for construction of a new wastewater impoundment or improvement of an existing wastewater impoundment, and ground water quality standards have not

been exceeded in monitoring wells installed to monitor the existing impoundment for the four quarters preceding submission of the corrective action plan, then the permittee may propose and the department may approve a liner for the new wastewater impoundment or improvement of the existing impoundment consistent with the liner design approved by the department at the time of the last discharge permit issued by the department before the effective date of the dairy rule.

G. Impoundment - structural integrity compromised. Within 24 hours of discovery, a permittee shall report to the department, any damage to the berms or the liner of an impoundment or any condition that exists that may compromise the structural integrity of the impoundment. Within 15 days of the reported discovery, the permittee shall submit to the department a corrective action plan describing any actions taken or proposed to be taken to repair the damage or condition. Within 30 days of receipt, the department shall respond to the proposed corrective action plan. Repairs to the impoundment liner or berms shall be completed pursuant to 20.6.6.17 NMAC. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. The schedule of corrective actions shall be commensurate to the magnitude and scope of the activities to be completed. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. Notwithstanding Paragraph (6) of Subsection D of 20.6.6.17 NMAC, if a corrective action plan required under this subsection calls for construction of a new wastewater impoundment or improvement of an existing wastewater impoundment, and ground water quality standards have not been exceeded in monitoring wells installed to monitor the existing impoundment for the four quarters preceding submission of the corrective action plan, then the permittee may propose and the department may approve a liner for the new wastewater impoundment or improvement of the existing impoundment consistent with the liner design approved by the department at the time of the last discharge permit issued by the department before the effective date of the dairy rule.

H. Unauthorized discharge - reporting and correction. In the event of a spill or release that is not authorized by the discharge permit, the permittee shall notify the department and take corrective actions pursuant to 20.6.2.1203 NMAC. Wastewater or stormwater shall be contained and pumped

to a permitted sump, impoundment, or land application area pursuant to the dairy rule. Wastewater or stormwater applied to the land application area shall conform to the requirements of 20.6.6.21 and 20.6.6.25 NMAC. The permittee shall repair or replace failed components within 48 hours from the time of failure or as soon as practicable.

[20.6.6.27 NMAC - N, 01/31/2011; A, 12/31/2011]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2011

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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

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Issue Number 9	May 1	May 15
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