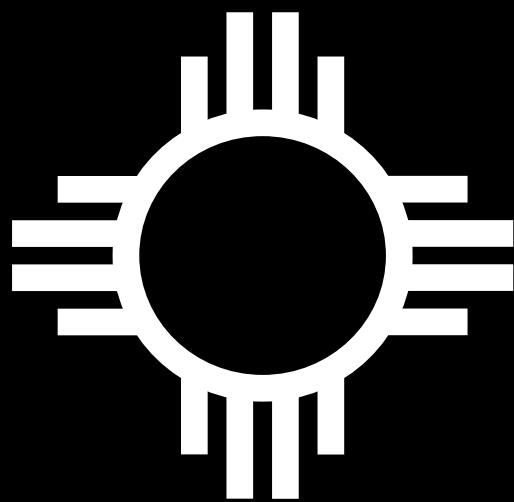


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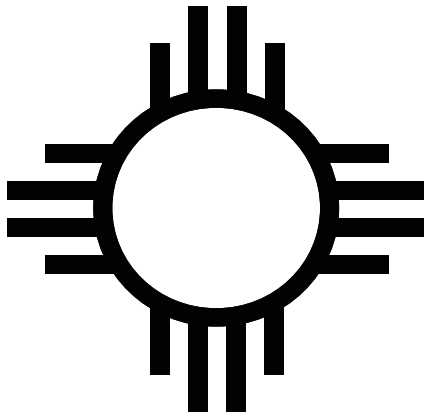


Volume XXIV  
Issue Number 14  
July 31, 2013



# **New Mexico Register**

**Volume XXIV, Issue Number 14  
July 31, 2013**



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  
2013

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# New Mexico Register

Volume XXIV, Number 14

July 31, 2013

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on October 8, 2013 at 10:00 a.m. at the Grant County Business and Conference Center, Fort Bayard Room, 3031 Highway 180 East, Silver City, New Mexico. The purpose of the hearing is to consider the matter of No. EIB 13-04(R), proposed revision to the New Mexico State Implementation Plan ("SIP") regarding Air Quality Control Regulation Part 98 of 20.2 New Mexico Administrative Code (Conformity of General Federal Action to the State Implementation Plan) ("20.2.98 NMAC").

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

The purpose of the public hearing is to consider and take possible action on a petition from NMED to repeal 20.2.98 NMAC. The proposed repeal is in response to the U.S. Environmental Protection Agency's ("EPA") March 24, 2010 amendments to the federal general conformity rule, 40 CFR Part 93, Subpart B – Determining Conformity of General Federal Actions to State or Federal Implementation Plans. 40 CFR 93 Subpart B was amended to make the adoption and submittal of General Conformity SIPs optional rather than mandatory for states. Upon adoption by the Board, the repeal of 20.2.98 NMAC would be submitted to EPA for incorporation into New Mexico's SIP.

The NMED will host an informational open house on the proposed repeal of 20.2.98 NMAC at the NMED Air Quality Bureau Office, 525 Camino del los Marquez, Suite 1, Santa Fe, New Mexico from 12:00p.m.-3:00p.m. on September 4, 2013. To attend the informational open house, please contact Gail Cooke at 505-476-4319 or [gail.cooke@state.nm.us](mailto:gail.cooke@state.nm.us).

The proposed revised regulation may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino del los Marquez, Suite 1, Santa Fe, New Mexico. Full text of NMED's proposed revised regulations are available on NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), or by contacting Gail Cooke at (505) 476-4319 or

[gail.cooke@state.nm.us](mailto:gail.cooke@state.nm.us).

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

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

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

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on September 18, 2013 and should reference the docket number, EIB 13-04(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Board Administrator  
Environmental Improvement Board  
P.O. Box 5469 Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-0310

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

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

Persons having a disability and needing help in being a part of this hearing process should contact Juan Carlos Borrego of the NMED

Human Resources Bureau by September 23, 2013 at P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-0424 or email [juancarlos.borrego@state.nm.us](mailto:juancarlos.borrego@state.nm.us). TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

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

### NEW MEXICO GAME COMMISSION

#### STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, August 22, 2013**, beginning at 8:00 a.m., in the **Martinez Hall Theatre at New Mexico State University Grants, 1500 3<sup>rd</sup> Street, Grants, NM 87020**, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: Valles Caldera National Preserve, Recent Wildfire Impacts to Wildlife and Habitat, Fiscal Year 2013 Depredation and Nuisance Abatement Report, Bear and Cougar Harvest Update, Pueblo of Santa Ana Pronghorn Antelope Management, Habitat Stamp Sikes Act Citizen Advisory Committee, San Juan Fisheries Project Update, Hatchery Overview, New Mexico's State Wildlife Action Plan, Vehicle Wildlife Collisions, Department Personnel Overview, Northwest Area Office Update. Additionally they will hear and consider action as appropriate on proposed and final amendments to the following rules: Revocations, Revocation Timeframes for Violators, Reservation of Two Elk Licenses for Non-profit Wish-Granting Organizations, Director's Authority to Accommodate Disability or Medical Impairment, Proposed Amendment to the Scientific and Education Rules 19.35.6 and 19.36.2 NMAC, Wild Turkey Management Update and Objectives 19.31.10 NMAC, Shooting Preserve in Chama, NM, Proposed Amendments to (19.31.12 NMAC) Ibex and Barbary Sheep Management, Migratory Game Birds 19.31.6 NMAC, Fiscal Year 2015 Budget Request, Proposed Amendments to Game and Fish Licenses/Permits (19.30.9 NMAC) - Vendor Bond Requirement, and Proposed Amendments to the Fisheries Rule, 19.31.4 and Manner and Method Rule 19.31.10 NMAC. They will hear general public comments (comments are limited to three minutes). A closed executive session is planned to discuss

matters related to litigation.

Obtain a copy of the agenda from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

## NEW MEXICO PUBLIC REGULATION COMMISSION

### BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Case No. 13-00152-UT

### IN THE MATTER OF AMENDING RULE 17.9.572 NMAC, RENEWABLE ENERGY FOR ELECTRIC UTILITIES

#### NOTICE OF PROPOSED RULEMAKING

**NOTICE IS HEREBY GIVEN** that the New Mexico Public Regulation Commission (Commission) proposes to amend Rule 17.9.572 NMAC (Rule 572). This matter comes before the Commission upon the Order Initiating Rulemaking which was issued May 1, 2013, pursuant to the Commission's own motion.

#### **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. The proposed Rule 572 is attached as Exhibit A to this Notice. Proposed deletions are struck through; proposed additions are underlined.

Additional copies of Exhibit A 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.**

3. This *Notice of Proposed Rulemaking* should constitute due and lawful notice to all potentially interested persons.
  4. 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 **September 10, 2013, Public Hearing**, that is, **October 10, 2013**, 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 participants may file comments or response comments, or as allowing the filing of other types of documents in this case.
  5. On June 5, 2013, Western Resource Advocates and Coalition for Clean Affordable Energy filed a "Motion for Flexible Scope of Proceeding." The Motion asked that this *Notice of Proposed Rulemaking* state: "The Commission recognizes that many parts of Rule 17.9.572 are inter-related, and that in order to serve the public interest to resolve the identified issues, other portions of the rule may also need to be revised."
  6. On June 18, 2013, New Mexico Industrial Energy Consumers (NMIEC) filed a response stating that if the Motion were granted "the Commission will be affording this party the opportunity to engage in a wide-ranging rewriting of the current rule on issues that CCAE/WRA has chosen not to disclose."
  7. NMIEC is correct – the Commission should deny the Motion.
- IT IS THEREFORE ORDERED:**
- A. Written comments and written responses to comments shall be limited to the following portions of Rule 572:
    - 1) Whether to keep "environmental credits pursuant to compliance rules in effect during the plan year, and costs for



capacity, transmission, or distribution that can be shown to result in actual reductions in costs to ratepayers” in Rule 17.9.572.14(C) (1) NMAC;

2) Whether to add language to Rule 17.9.572.14(C)(1) NMAC to account for the costs, if any, that are currently not being accounted for in that Rule that would be incurred by a utility in providing renewable energy;

3) Whether the definition of “renewable energy certificate” in Rule 17.9.572.7(E) NMAC should be amended to read: “renewable energy certificate means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one kilowatt-hour of electricity generation from a renewable energy resource,” which is the definition found in NMSA 1978, Section 62-16-3(F)(amended 2007); and

4) Whether the definition of “fully diversified renewable energy portfolio” in Rule 17.9.572.7(G) NMAC should be amended, not amended, or deleted altogether.

B. Any person wishing to comment on the possible amendments to Rule 17.9.572 NMAC may do so by submitting written comments no later than **July 26, 2013**. Any person wishing to respond to comments may do so by submitting written responses no later than **August 26, 2013**. With respect to any of the above four portions of Rule 572, commenters shall state their position and their particular reasons for their position. Comments suggesting changes to any of the above four portions of Rule 572 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 shall be provided in a form consistent with that of the existing Rule.

C. All pleadings, including comments and responses, shall be filed with the Commission’s Records Division, at either of the addresses set out in paragraph 2.

D. A public comment hearing on the proposed rule amendments, to be presided over by the Commission, shall be held beginning at **8:30 a.m. on September 10, 2013**, at the offices of the Commission, at the following location:

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

The public comment hearing will be held in order to receive oral comments only by those persons who did not file written comments or written responses. Since commenters are afforded the opportunity to submit written comments and written

responses to the Commission, any individual who wants to provide public comments at the public comment hearing shall be limited to three minutes to express those comments, subject to the Commission’s discretion. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the public comment hearing as this is a rulemaking proceeding.

E. All persons providing public comment and/or participating in the public hearing are encouraged to provide specific comments on any proposed amendments to Rule 572.

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

G. 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.

H. 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 A, shall be mailed to all persons who have made a written request for advance notice and shall be published without Exhibit A 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.

I. Copies of this *Notice of Proposed Rulemaking*, including Exhibit A, 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.

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

K. 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.

L. The Motion filed by Western Resource Advocates and Coalition for Clean Affordable Energy is denied.

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

**ISSUED** under the seal of the Commission at Santa Fe, New Mexico, this 26th day of June, 2013.

#### **NEW MEXICO PUBLIC REGULATION COMMISSION**

**BEN L. HALL, CHAIRMAN**

**VALERIE ESPINOZA, VICE CHAIR**

**KAREN L. MONTOYA, COMMISSIONER**

**PATRICK H. LYONS, COMMISSIONER**

**THERESA BECENTI-AGUILAR, COMMISSIONER**

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#### **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 Wednesday September 4, 2013 at 9:00 a.m., the New Mexico Law Enforcement Academy Board will hold a Regular Board Meeting to include a Public Hearing on Proposed Rule Change of 10.29.9 Police Officer.

The NMLEA Board Meeting will be held at the Ruidoso Convention Center. 111 Sierra Blanca Drive. Ruidoso, NM 88345

Copies of the Regular Board Meeting Agenda’s and Proposed Rule Change may be obtained by accessing our website at [www.dps.nm.org/training](http://www.dps.nm.org/training) or by calling Monique Lopez at (505) 827-9255.

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**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
CONSTRUCTION INDUSTRIES  
DIVISION**

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

**NOTICE OF PUBLIC HEARINGS**

Public hearings on the proposed changes to the following CID Rules: 14.5.2 NMAC, Permits, 14.6.2 NMAC, Contractor's License Requirements and 14.6.5 NMAC, Inspectors; will be held as follows:

**September 4, 2013, 9:00 a.m. – 12:00 p.m.:**  
**SANTA FE, NM** – CID Conference Room, 2550 Cerrillos Road, Santa Fe, NM.

**September 4, 2013, 9:00 a.m. – 12:00 p.m.:**  
**LAS CRUCES, NM** – CID Conference Room, 505 South Main Street, Suite 118, Las Cruces, NM.

**September 4, 2013, 9:00 a.m. – 12:00 p.m.:**  
**ALBUQUERQUE, NM** – CID Conference Room, 5200 Oakland Avenue NE, Albuquerque, NM.

Copies of the proposed rules are currently available on the Construction Industries Division's website: [www.rld.state.nm.us/construction](http://www.rld.state.nm.us/construction) and at the CID office in Santa Fe. You are invited to attend and express your opinion on these proposed rules changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, Santa Fe, New Mexico 87504, Attention: Public Comments. FAX (505) 476-4619. **All comments must be received no later than 5:00 p.m., on September 2, 2013. If you require special accommodations to attend the hearing, please notify the Division by phone, email, or fax, of such needs no later than September 2, 2013.** Telephone: 505-476-4700 (option "0"). Email: [fermin.aron@state.nm.us](mailto:fermin.aron@state.nm.us) Fax No. 505-476-4619.

**NEW MEXICO WATER  
QUALITY CONTROL  
COMMISSION**

**NEW MEXICO WATER QUALITY  
CONTROL COMMISSION  
NOTICE OF RE-SCHEDULED PUBLIC  
HEARING TO CONSIDER  
PROPOSED AMENDMENTS TO 20.6.6  
NMAC (DAIRY RULE)  
WQCC 12-09 (R)**

The New Mexico Water Quality Control Commission will hold the public hearing originally scheduled for December 2012 on September 10, 2013 beginning at 9 a.m. at the New Mexico State Capitol Building, Room 307, 409 Old Santa Fe Trail, Santa Fe, New Mexico to consider proposed amendments to the Commission's Dairy Rule, 20.6.6 NMAC, proposed in WQCC Docket Number 12-09 (R) by the Dairy Industry Group for a Clean Environment (DIGCE).

The proposed rule changes would (1) allow alternative backflow prevention devices from those specified in the Dairy Rule; (2) eliminate the requirement to conduct field calibration of flow meters; and (3) modify the Nutrient Management Plan requirements to focus on ground water protection.

The proposed changes may be reviewed during regular business hours at the Commission Administrator's office located in the Harold Runnels Building, 1190 St. Francis Drive, Room S-2102 Santa Fe, New Mexico, 87502. In addition, copies of the proposed amendments are posted on the NMED website at <http://www.nmenv.state.nm.us>.

The hearing will be conducted in accordance with the Guidelines for Water Quality Control Commission Regulation Hearings, the Water Quality Act, Section 74-6-6 NMSA 1978, and other applicable procedures and procedural orders. Written comments regarding the proposed revisions may be addressed to Pam Castañeda, Commission Administrator, at the above address; reference docket number WQCC 12-09 (R).

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

Persons wishing to present technical testimony must file with the Commission

a written notice of intent to do so. The requirements for a notice of intent can be found in the Commission's Guidelines for Regulation Hearings and have been modified by a procedural order entered in this matter, which may be obtained from the Administrator. Notices of intent for the hearing must be received by in the Office of the Commission Administrator by 5:00 pm on August 16, 2013, and should reference the name of the regulation, the date of the hearing, and docket number WQCC 12-09 (R). Notices of intent already filed in connection with the original hearing setting need not be re-filed.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by August 16, 2013. The Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, and (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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

**COMMISSION NOTICE DE CONTROL  
DE CALIDAD DE AGUA NUEVO  
MÉXICO REPROGRAMADO  
AUDIENCIA PÚBLICA PARA  
CONSIDERAR ENMIENDAS A 20.6.6  
NMAC (REGLA DE LÁCTEOS) WQCC  
12-09 (R)**

La Comisión de Control de Calidad del Agua de Nuevo México celebrará la audiencia pública prevista inicialmente para diciembre de 2012 en el 10 de Septiembre 2013 a las 9 am en el New Mexico State Capitol Building, Room 307, 409 Antiguo Camino de Santa Fe, Santa Fe, New Mexico a considerar propuestas de enmienda a la regla Lácteos de la Comisión, 20.6.6 NMAC, propuestas en WQCC Expediente Número 12-09 (R) por el Grupo de la Industria Lechera para un Ambiente Limpio (DIGCE).

Los cambios en las reglas propuestas serían (1) permitir que los dispositivos de prevención de reflujo alternativas de los especificados en la Regla Dairy, (2) eliminar el requisito de llevar a cabo la calibración en campo de medidores de flujo, y (3) modificar los requisitos del Plan de Manejo de Nutrientes para centrarse en las aguas subterráneas protección.

Los cambios propuestos pueden ser revisados durante el horario regular en la oficina del administrador de la Comisión, ubicadas en el edificio Harold Runnels, 1190 St. Francis Drive, Room N-2150 Santa Fe, New Mexico, 87502. Además, las copias de las enmiendas propuestas se publican en el sitio web de NMED en <http://www.nmenv.state.nm.us>.

La audiencia se llevará a cabo de conformidad con las Directrices para la Comisión de Control de Calidad del Agua Audiencias Reglamento, la Ley de Calidad del Agua, Sección 74-6-6 NMSA 1978, y otros procedimientos aplicables y las órdenes de procedimiento. Los comentarios por escrito sobre el proyecto de revisiones, puede dirigirse a Pam Castañeda, Administrador Comisión, a la dirección anterior, la referencia número de expediente WQCC 12-09 (R).

Todas las personas interesadas se les dará oportunidad razonable en la audiencia para presentar pruebas pertinentes, los datos, opiniones y argumentos, de forma oral o por escrito, a presentar pruebas, y para interrogar a los testigos. Cualquier persona que desee presentar una declaración de carácter no técnico escrito para el registro en lugar de testimonio oral debe presentar dicha declaración antes del cierre de la audición.

Las personas que deseen presentar testimonio técnico deben presentar a la Comisión una notificación por escrito de su intención de hacerlo. Los requisitos para un aviso de intención se puede encontrar en las Directrices de la Comisión para las audiencias de regulación y se han modificado por una orden de procedimiento consignados en el presente asunto, que se puede obtener del administrador. Las notificaciones de intención para la audiencia debe recibir en la Oficina del Administrador de la Comisión de las 5:00 pm el 16 de Agosto de 2013, y deben hacer referencia al nombre de dicho Reglamento, la fecha de la audiencia, y el número de expediente WQCC 12-09 (R). Las notificaciones de intención ya presentadas en relación con el ajuste de la audiencia inicial no necesita ser re-presentada.

Si usted es una persona con una discapacidad y necesita ayuda o una ayuda auxiliar, por ejemplo, un intérprete de lenguaje, para participar en cualquier aspecto de este proceso, por favor póngase en contacto con la Oficina de Servicios de Personal el 16 de Agosto de 2013. La oficina puede ser contactada en el Departamento de Medio Ambiente de Nuevo México, 1190 St. Francis Drive, PO Caja 5469, Santa Fe, NM 87502 hasta 5469, y (505) 827-9872. Los usuarios de TDD o TDY pueden acceder a este número a través de la Red de New

Mexico Relay (Albuquerque TDD: (505) 275-7333; fuera de Albuquerque: 1-800-659-1779.)

La Comisión podrá adoptar una decisión sobre los cambios normativos propuestos en la conclusión de la audiencia, o podrá convocar una reunión después de la audiencia para considerar la acción sobre la propuesta.

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### End of Notices and Proposed Rules Section

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## Adopted Rules

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

20.11.41 NMAC, Authority to Construct, filed 8/30/02 is hereby repealed and replaced by 20.11.41 NMAC, Construction Permits, effective 1/1/14. The Albuquerque - Bernalillo County Air Quality Control Board adopted these changes at its July 10, 2013 regular meeting.

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

**TITLE 20 ENVIRONMENTAL  
PROTECTION  
CHAPTER 11 ALBUQUERQUE  
- BERNALILLO COUNTY AIR  
QUALITY CONTROL BOARD  
PART 41 CONSTRUCTION  
PERMITS**

**20.11.41.1 ISSUING AGENCY:**  
Albuquerque-Bernalillo County Air Quality Control Board, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601. [20.11.41.1 NMAC - Rp, 20.11.41.1 NMAC, 1/1/14]

**20.11.41.2 SCOPE:** 20.11.41 NMAC applies to every person who intends to construct, operate, modify, relocate or make a technical revision to a source that is subject to 20.11.41 NMAC or who has authority to operate a source that triggers the emission thresholds in Subsection B of 20.11.41.2 NMAC, except as otherwise provided.

**A. Applicability:** Every stationary source subject to 20.11.41 NMAC shall obtain an air quality construction permit from the department as required by 20.11.41 NMAC before:

(1) commencing construction of a new stationary source;

(2) operating a stationary source that was required by 20.11.41 NMAC to obtain a construction permit before commencing construction or modification, but the stationary source has no active construction permit; or

(3) modification of a stationary source.

**B. Emission thresholds that require a construction permit before commencing construction, modification or operation of a stationary source subject to 20.11.41 NMAC:**

(1) If a person proposes to

construct or operate a new stationary source that will emit one or more regulated air contaminants for which a federal, state or board ambient air quality standard exists and if the source will emit, when calculated at the contaminant's potential emission rate, 10 pounds per hour or more or 25 tons per year or more of any single regulated air contaminant, then the person shall apply for and obtain a construction permit as required by 20.11.41 NMAC before the person commences construction or operation of the source.

(2) If a person proposes a modification of a stationary source and the modification will emit one or more regulated air contaminants for which a federal, state or board ambient air quality standard exists, and if, as a result of the modification, all activities at the source will emit, when calculated at the contaminant's potential emission rate, 10 pounds per hour or more or 25 tons per year or more of a regulated air contaminant, then the person shall apply for and obtain a construction permit or permit modification as required by 20.11.41 NMAC before the person commences construction or operation.

(3) If a person proposes to construct a new stationary source or proposes a modification of a stationary source permit, and if the source will emit, when calculated at the air contaminant's potential emission rate, two tons per year or more of a single hazardous air pollutant (HAP) as defined by Section 112(b) of the federal Clean Air Act, or five tons or more per year of any combination of HAP, then the proposed or existing source shall apply for and obtain a construction permit or construction permit modification as required by 20.11.41 NMAC before the person commences construction.

(4) If a stationary source was not required to obtain a construction permit pursuant to 20.11.41 NMAC because the source was operating before August 31, 1972, and if operations of the source have ceased for five or more consecutive years, and if an air contaminant proposed to be emitted by the source triggers the emission thresholds in Paragraphs (1) or (3) of Subsection B of 20.11.41.2 NMAC, then the owner or operator of the source shall apply for and obtain a construction permit as required by 20.11.41 NMAC before the person constructs, modifies or operates the source.

(5) If a person proposes to construct a new stationary source or proposes to modify an existing stationary source and if the source will emit, when calculated at the contaminant's potential emission rate, five tons per year or more of lead (Pb) or any combination of lead and its compounds, then the person shall apply for and obtain a

construction permit or construction permit modification as required by 20.11.41 NMAC before the person commences construction, modification or operation.

(6) If a stationary source was constructed after August 31, 1972 and the source is subject to an existing or new board regulation that includes an equipment emission limitation, the source shall apply for and obtain a construction permit or construction permit modification as required by 20.11.41 NMAC.

**C. Source classifications; source types:** If a person proposes to construct a new stationary source, modify an existing stationary source, construct a portable or temporary stationary source, or proposes a technical permit revision and any of the following conditions apply, the person shall apply for and obtain a construction permit, a construction permit modification or technical permit revision approval pursuant to 20.11.41 NMAC before commencing construction or modification of:

(1) any equipment or process that is subject or becomes subject to 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*, or 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*;

(2) any stationary source that meets the applicability requirements of 20.11.41 NMAC; however, if the source is also a major stationary source or a major modification as defined in 20.11.60 NMAC, *Permitting in Nonattainment Areas*, then the source shall in addition be subject to 20.11.60 NMAC;

(3) any stationary source that meets the applicability requirements of 20.11.41 NMAC; however, if the source is also a major stationary source or a major modification as defined in 20.11.61 NMAC, *Prevention of Significant Deterioration*, then the source shall in addition be subject to 20.11.61 NMAC; and

(4) a major source of HAP as defined in 40 CFR Part 63.

**D. Sources that become subject to new NSPS or NESHAP:** If a person is operating a source that becomes subject to a new NSPS or NESHAP, the person shall apply for and obtain a construction permit as required by 20.11.41 NMAC.

**E. Additional permit requirements:**

(1) If a source includes more than one unit, the department may require a separate construction permit or permit conditions for each unit that is not substantially interrelated with another unit. A common connection leading to ductwork, pollution control equipment or a single stack

shall not, by itself, constitute a substantial interrelationship.

(2) Although more than one air quality regulation adopted by the board may apply to a stationary source, including 20.11.40, 60, 61, 63, and 64 NMAC, nothing in 20.11.41 NMAC shall be construed to require more than one permit application for each unit proposed for construction or modification. Definitions and provisions included in specific federal program regulations shall apply to permit review of any regulated air contaminant and source regulated by the federal NSPS, NESHAP, prevention of significant deterioration, visibility or nonattainment requirements.

(3) For all sources subject to 20.11.41 NMAC, applications for permits shall be filed before commencement of construction, modification, relocation or technical revision. Regardless of the anticipated commencement date, no construction, modification, relocation or revision shall commence before the owner or operator has received a permit or written approval from the department.

**F. Exemptions:**

(1) 20.11.41 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

(2) The following sources and activities shall not be reported in the permit application. Emissions from such activities shall not be included in the calculation of the facility-wide potential emission rate under Paragraphs (1)-(5) of Subsection B and Subsection C of 20.11.41.2 NMAC. The following activities may be commenced or changed without a permit or permit modification under 20.11.41 NMAC if the emissions and activities are not subject to any requirement under a local board regulation, the New Mexico Air Quality Control Act, NMSA 1978, NSPS or NESHAP:

(a) activities which occur strictly for maintenance of grounds or buildings, including: lawn care, pest control, grinding, cutting, welding, painting, woodworking, sweeping, general repairs, janitorial activities, and building roofing operations;

(b) activities for maintenance of equipment or pollution control equipment, either inside or outside of a building, including cutting, welding, painting and grinding;

(c) exhaust emissions from forklifts, courier vehicles, front end loaders, graders, carts, and maintenance trucks;

(d) use of fire fighting equipment and fire fighting training provided the emissions are not subject to any requirement of a NSPS or NESHAP;

(e) government military activities such as field exercises, explosions, weapons testing and demolition to the extent that such

activities do not result in visible emissions entering publicly accessible areas;

(f) use of portable aerospace ground equipment (such as power generators, compressors, heaters, air conditions, lighting units) if the equipment is used in direct support of aircraft operations, and on or in the immediate vicinity of an airfield;

(g) use of portable support equipment such as power generation equipment, compressors, heaters, air conditioning and lighting equipment used for activities that include, but are not limited to maintenance and repair if the equipment is used fewer than 12 consecutive months at the same location and the equipment does not directly support an otherwise regulated portable stationary source (such as a screening plant, sand and gravel processing equipment, hot mix asphalt plant, concrete plant or soil vapor extraction system); and

(h) gases used to calibrate plant instrumentation, including continuous emission monitoring (CEM) systems.

(3) An applicant for a permit is not required to obtain a permit for the following new or modified sources and activities at a facility, but is required to report the following on permit application forms available from the department: fuel burning equipment that is used solely for heating buildings for personal comfort or for producing hot water for personal use and that:

(a) uses gaseous fuel and has a design rate of five million BTU per hour or less; or

(b) uses distillate oil, but not including waste oil, and has a design rate of one million BTU per hour or less.

(4) After a permit has been issued, construction of the sources or commencement of the sources and activities described in Paragraph (3) of Subsection F of 20.11.41.2 NMAC shall comply with the administrative permit revision procedures in Subsection A of 20.11.41.28 NMAC. Emissions from the sources and activities described in Paragraph (3) of Subsection F of 20.11.41.2 NMAC shall not be included in the facility-wide potential emission rate calculation that is described in Subsections B and C of 20.11.41.2 NMAC.

[20.11.41.2 NMAC - Rp, 20.11.41.2 NMAC, 1/1/14]

**20.11.41.3 STATUTORY AUTHORITY:**

20.11.41 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 & 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 & 9-5-1-4.

[20.11.41.3 NMAC - Rp, 20.11.41.3 NMAC,

1/1/14]

**20.11.41.4 DURATION:**

Permanent.  
[20.11.41.4 NMAC - Rp, 20.11.41.4 NMAC, 1/1/14]

**20.11.41.5 EFFECTIVE DATE:**

January 1, 2014, unless a later date is cited at the end of a section.  
[20.11.41.5 NMAC - Rp, 20.11.41.5 NMAC, 1/1/14]

**20.11.41.6 OBJECTIVE:**

To establish the requirements for obtaining a construction permit, construction permit modification, relocation and administrative and technical permit revision.  
[20.11.41.6 NMAC - Rp, 20.11.41.6 NMAC, 1/1/14]

**20.11.41.7 DEFINITIONS:**

In addition to the definitions in 20.11.41 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.41 NMAC shall govern.

**A. "Act" or "state act"**

means the New Mexico Air Quality Control Act, Chapter 74, Article 2 NMSA 1978.

**B. "Administrative permit revision" or "administrative revision"**

means a revision to a construction permit for a source that is requested and approved pursuant to Subsection A of 20.11.41.28 NMAC.

**C. "Air contaminant" or "contaminant"**

means a substance, including particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay or reaction product thereof.

**D. "Air pollutant", "pollutant", "air pollution" or "pollution"**

means the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property.

**E. "Air pollution control equipment"**

means any device, equipment, process or combination thereof the operation of which would limit, capture, reduce, confine, or otherwise control air contaminants or convert for the purposes of control any air contaminant to another form, another chemical or another physical state.

**F. "Ambient air"**

means the outdoor atmosphere, but does not include the area entirely within the geographical boundaries of the source from which the air contaminants are, or may be, emitted and where public access is restricted within the

boundaries.

**G. “Applicable requirement”** means any of the following, and includes requirements that have been promulgated or approved by the board or EPA through rulemaking:

(1) any standard or other requirement provided in the New Mexico state implementation plan approved by EPA, or promulgated by EPA through rulemaking, under Title I of the federal act, including Parts C or D;

(2) any term or condition of a construction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I of the federal act, including Parts C or D;

(3) any standard or other requirement:

(a) under Section 111 or 112 of the federal act;

(b) of the acid rain program under Title IV of the federal act or the regulations promulgated thereunder;

(c) governing solid waste incineration under Section 129 of the federal act;

(d) that applies to consumer and commercial products under Section 183(e) of the federal act; or

(e) of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act, unless the EPA administrator has determined that the requirements need not be contained in a Title V permit;

(4) any requirements established pursuant to Section 504(b) or Section 114(a) (3) of the federal act;

(5) any national or New Mexico ambient air quality standard;

(6) any increment or visibility requirement under Part C of Title I of the federal act applicable to temporary sources permitted pursuant to Section 504(e) of the federal act; and

(7) any regulation adopted by the board in accordance with the city of Albuquerque and county of Bernalillo joint air quality control board ordinances pursuant to the Air Quality Control Act, and the laws and regulations in effect pursuant to the Air Quality Control Act.

**H. “Board”** means the Albuquerque-Bernalillo county air quality control board or its successor board pursuant to the state act.

**I. “Commence”, “commencement”, “commencing” or “commences”** means an owner or operator has undertaken a continuous program of construction or modification, has entered into a binding contractual obligation to undertake and complete a continuous program of construction within a reasonable time, or has acquired the right to operate a source that is subject to 20.11.41 NMAC and

plans to commence operating the source.

**J. “Conflict of interest”** for the purposes of accelerated review, means any direct or indirect relationship between the qualified outside firm and the applicant or other interested person that would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of the qualified outside firm in review of the application. A conflict of interest does not include any gifts, gratuities, financial or contractual relationship that totals less than \$100 in value for the 12 month period preceding the department’s receipt of the application. A conflict of interest includes:

(1) gifts or gratuities of value that have been exchanged between the qualified outside firm and the applicant;

(2) the qualified outside firm having provided goods or services to the applicant within one year before the start, or during the term, of the accelerated review process;

(3) an express or implied contractual relationship that exists between the qualified outside firm and the applicant, and the qualified outside firm has provided goods or services to the applicant as a result of the relationship within five years before the start of the accelerated review process; or

(4) a current financial relationship between the qualified outside firm and the applicant; current financial relationships include, but are not limited to:

(a) the qualified outside firm owes anything of value to, or is owed anything of value by the applicant; and

(b) the qualified outside firm has provided goods or services to the applicant and has issued a warranty or guarantee for the work that is still in effect during the time the contracted work for accelerated review is being performed;

(5) a director, officer or employee of the qualified outside firm that will perform services under a contract pursuant to 20.11.41.32 NMAC, and has one or more personal, business or financial interests or relationships with the applicant or any director, officer or employee of the applicant that would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a contract;

(6) a director, officer or employee of the qualified outside firm was a director, officer or employee of the applicant within one year before the start of the accelerated review process;

(7) a communication that has occurred between the qualified outside firm and the applicant regarding the substance of the application before a qualified outside firm has been selected to perform accelerated review of an application except as allowed by the department; direct communication

between the qualified outside firm and the applicant may take place after the qualified outside firm has been selected by the department;

(8) an affiliate of the applicant has any of the above described relationships with the qualified outside firm;

(9) an affiliate of the qualified outside firm has any of the above described relationships with the applicant; and

(10) an affiliate of the applicant has any of the above described relationships with any affiliate of the qualified outside firm.

**K. “Construction”** means fabrication, erection, installation or relocation of a stationary source, including but not limited to temporary installations and portable stationary sources.

**L. “Days”** means consecutive days except as otherwise specifically provided.

**M. “Department”** means the Albuquerque environmental health department, which is the administrative agency of the Albuquerque-Bernalillo county air quality control board.

**N. “Emergency”** means unforeseen circumstances resulting in an imminent and substantial endangerment to health, safety, or welfare and that require immediate action.

**O. “Emission limitation”** means a requirement established by EPA, the state implementation plan (SIP), the state act, local ordinance, permit or board regulation that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous reduction.

**P. “Emission unit” or “unit”** means any article, machine, equipment, contrivance, process or process line that emits or reduces, or may emit or reduce, the emissions of any air contaminant, except from motor vehicles.

**Q. “EPA”** means the United States environmental protection agency.

**R. “Federal clean air act”, “CAA” or “federal act”** means the federal Clean Air Act, 42 U.S.C. Section 7401 through 7671 et seq., as amended.

**S. “Federally enforceable”** means all limitations and conditions that are enforceable by the administrator of the EPA, including all requirements adopted pursuant to 40 CFR Parts 60, 61 and 63; all requirements included in any applicable state implementation plan; and any permit requirements imposed pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.



**T. “Malfunction”** means any sudden, infrequent and not reasonably preventable failure of air pollution control equipment or process equipment, or the failure of a process to operate in a normal or expected manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

**U. “Modification” or “to modify”** means a physical change in, or change in the method of operation of a source that results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or that results in the emission of any regulated air contaminant not previously emitted; a relocation of a stationary source, unless previously established as a portable stationary source subject to specific permit conditions; or a revision that involves substantive changes that exceed the scope of a revision as defined by 20.11.41.28 NMAC, but does not include:

(1) a change in ownership of the source;

(2) routine maintenance, repair or replacement;

(3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the state or local board or pursuant to the CAA; or

(4) unless previously limited by enforceable permit conditions:

(a) an increase in the production rate, if the increase does not exceed the operating design capacity of the source;

(b) an increase in the hours of operation; or

(c) use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating the fuel or raw material or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

**V. “National ambient air quality standards” or “NAAQS”** means the primary (health based) and secondary (welfare-related) federal ambient air quality standards promulgated by the EPA pursuant to Section 109 of the CAA.

**W. “National emission standards for hazardous air pollutants” or “NESHAP”** means the regulatory requirements, guidelines and emission limitations promulgated by the EPA pursuant to Section 112 of the CAA.

**X. “New Mexico ambient air quality standards” or “NMAAQs”** means the ambient air quality standards promulgated by the New Mexico environmental improvement board.

**Y. “New source performance standard” or “NSPS”** means

the regulatory requirements, guidelines and emission limitations promulgated by the EPA pursuant to Section 111 of the CAA.

**Z. “Nonattainment area”** means for any air contaminant an area that is shown by monitoring data or that is calculated by air quality modeling (or by other methods determined by the director of the department or the administrator of the EPA to be reliable), to exceed either a state NMAAQs or NAAQS for the contaminant, including but not limited to areas identified under Section 107 (d)(1)(A) through (C) of the CAA.

**AA. “North American industry classification system” or “NAICS”** means the industry classification system that is used by the statistical agencies of the United States, is issued by the federal office of management and budget and replaced the standard industrial classification (SIC) system.

**BB. “Operator”** means the local organization or subdivision of the firm or person, whether private, corporate or public, that manages, on location, the operations of the stationary source.

**CC. “Owner”** means the person or persons who own a source.

**DD. “Part”** means an air quality control regulation organized under Title 20, Chapter 11 of the New Mexico Administrative Code that has been adopted or amended by the board, unless otherwise noted.

**EE. “Permit”** means a construction permit for a source or a construction permit modification, relocation, or administrative or technical permit revision that has been issued or approved by the department pursuant to 20.11.41 NMAC. A permit includes constraints, emissions limitations and other conditions and authorizes a person to commence construction, modification, relocation, or technical revision to the permitted source or operation; or commence operation of a facility that contains a source that is subject to 20.11.41 NMAC.

**FF. “Permittee”** means the person who has applied for and has obtained a construction permit for a source that has been issued a permit pursuant to 20.11.41 NMAC.

**GG. “Portable stationary source”** means a source that can be relocated to another operating site with limited dismantling and reassembly, including, as an example, movable sand and gravel processing operations, concrete plants, asphalt plants and soil vapor extraction systems.

**HH. “Potential emission rate”** means the emission rate of a source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or

operational limitation on the capacity of the source to emit a regulated air contaminant, (including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed), shall be treated as part of its physical and operational design, but only if the limitation or the effect the limitation would have on emissions is enforceable by the department pursuant to the state act or the federal act.

**II. “Process equipment” or “process equipment unit”** means any equipment, apparatus or device, including chemical, industrial or manufacturing facilities such as ovens, mixing kettles, heating and reheating furnaces, kilns, stills, dryers, roasters and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit any air contaminant.

**JJ. “Public information hearing” or “PIH”** means the hearing provided by the department pursuant to 20.11.41.15 NMAC during which attendees can ask questions, provide comments and provide information; a PIH is not a hearing on the merits that results in a final decision at the close of the hearing.

**KK. “Regulated air contaminant”** means any air contaminant, the emission or ambient concentration of which is regulated pursuant to the New Mexico air quality control act or the federal act.

**LL. “Relocation”** means to physically move a portable stationary source.

**MM. “Shutdown”** means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units.

**NN. “Significant impact”** means to pollute to an extent that ambient air contaminant concentrations, including background, exceed any of the significance levels listed in Table 1 of 20.11.41.33 NMAC, as indicated by modeling techniques authorized by the department.

**OO. “Standard industrial classification” or “SIC”** means the code from the system used to classify all industries in the United States economy that was administered by the federal statistical policy division of the office of management and budget and in 1997 was replaced by the North American industry classification system (NAICS).

**PP. “Startup”** means to put a stationary source that has been constructed or modified as authorized by a permit issued pursuant to 20.11.41 NMAC into operation complete with functional air pollution controls, so the process equipment or the process performs for the purpose intended. The operation may be cyclic in response to



on-off controls. Repetition of cycles is not startup for purposes of 20.11.41 NMAC.

**QQ. “Stationary source” or “source”** means any building, structure, equipment, facility, portable stationary source or installation that is either permanent or temporary, excluding a private residence, that emits or may emit any regulated air contaminant or any pollutant listed under Section 112(b) of the federal act, the state act, or the laws and regulations in effect pursuant to the state act. Several buildings, structures, facilities, or installations, or any combination will be treated as a single stationary source if they belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons, or are under common control. Air pollution activities shall be treated as the same industrial grouping if they have the same first two digits of an applicable North American industry classification system (NAICS) code.

**RR. “Technical permit revision” or “technical revision”** means a revision to a construction permit pursuant to Subsection B of 20.11.41.28 NMAC.

[20.11.41.7 NMAC - Rp, 20.11.41.7 NMAC, 1/1/14]

**20.11.41.8 VARIANCES:** A person may request a variance from 20.11.41 NMAC in accordance with the procedures established in 20.11.7 NMAC, *Variance Procedure*.

[20.11.41.8 NMAC - Rp, 20.11.41.8 NMAC, 1/1/14]

**20.11.41.9 SAVINGS CLAUSE:** Any amendment to 20.11.41 NMAC that is filed with the state records center and archives shall not affect actions pending for violation of the state act, a city or county ordinance, a prior version of 20.11.41 NMAC, another board regulation or a permit issued by the department. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance or regulation in effect at the time the violation was committed.

[20.11.41.9 NMAC - Rp, 20.11.41.9 NMAC, 1/1/14]

**20.11.41.10 SEVERABILITY:** If for any reason any section, paragraph, sentence, clause, wording or application of 20.11.41 NMAC or any federal or New Mexico standards incorporated herein is held unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity or application of remaining provisions of 20.11.41 NMAC.

[20.11.41.10 NMAC - Rp, 20.11.41.10 NMAC, 1/1/14]

**20.11.41.11 DOCUMENTS:** Documents incorporated and cited in 20.11.41 NMAC may be viewed at the Albuquerque environmental health department, One Civic Plaza NW, Albuquerque, NM 87102. Permit applications, supporting documentation, preliminary determinations made by the department, and draft permits, if completed, shall be available for public inspection at the department’s air quality division office at One Civic Plaza NW, Albuquerque, New Mexico 87102.

[20.11.41.11 NMAC - Rp, 20.11.41.11 NMAC, 1/1/14]

**20.11.41.12 FEES FOR PERMIT APPLICATION REVIEW:** An application for a permit shall be accompanied by a check or money order in the amount required by 20.11.2 NMAC, *Fees*. No application shall be complete until the entire fee has been paid. Checks shall be made payable to the city of Albuquerque as required by 20.11.2 NMAC, *Fees*.

[20.11.41.12 NMAC - Rp, 20.11.41.12 NMAC, 1/1/14]

**20.11.41.13 APPLICATION FOR PERMIT:**

**A. Pre-application requirements:** A person who is seeking a permit pursuant to 20.11.41 NMAC shall contact the department in writing and request a pre-application meeting for information regarding the contents of the application and the application process. The meeting shall include discussion of approved emission factors and control efficiencies, air dispersion modeling guidelines, department policies, air quality permit fees, public notice requirements and regulatory timelines. The department may waive the pre-application meeting requirement.

**B. Applicant’s public notice requirements:** If the applicant is applying for a technical permit revision, then before the applicant submits the application required by Subsection B of 20.11.41.28 NMAC, the applicant shall comply with the public notice requirements of Paragraph (1) of Subsection B of 20.11.41.13 NMAC. If the applicant is applying for a permit or permit modification, then before the applicant submits the application required by Subsection E of 20.11.41.13 NMAC, the applicant shall comply with the public notice requirements of Paragraphs (1) and (2) of Subsection B of 20.11.41.13 NMAC. If the applicant is applying for a portable stationary source relocation, then the department may require that the applicant comply with these same notice requirements. The applicant shall:

(1) provide public notice by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations

and recognized coalitions that are within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be located; contact information shall be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department; the public notice shall include all information required by Subsection C of 20.11.41.13 NMAC; the applicant may submit a written request to the department proposing an alternative approach to providing public notice if the proposed source or modification is located at a site with large property boundaries or campus-like facilities; the applicant shall obtain prior written approval from the department before using an alternative approach to providing public notice;

(2) prior to submitting the application, post and maintain a weather-proof sign provided by the department, posted at the more visible of either the proposed or existing facility entrance or, if approved in advance and in writing by the department, at another location on the property that is accessible to the public; the applicant shall list all information required by Subsection C of 20.11.41.13 NMAC, on the sign; the applicant shall keep the sign posted until the department takes final action on the permit application; if an applicant can establish to the department’s satisfaction that the applicant is prohibited by law from posting, at either location required by Paragraph (2) of Subsection B of 20.11.41.13 NMAC, the department may waive the posting requirement and may impose different notification requirements.

**C. Additional public notice requirements:** The public notice specified in Paragraphs (1) and (2) of Subsection B of 20.11.41.13 NMAC shall include the following:

(1) the applicant’s name and address, and the names and addresses of the owner or operator of the source or proposed source;

(2) the actual or estimated date the application will be submitted to the department;

(3) the exact location of the source or proposed source;

(4) a description of the source and related facility, if any; the nature of the business; the process or the change for which the permit is being requested, including a preliminary estimate of the maximum quantities of each regulated air contaminant the source will emit if the permit is issued and the proposed construction or modification is completed; and, if the source is being modified, the net change in emissions;

(5) the maximum and normal operating schedules proposed for the source or facility; and

(6) the current address of the applicant to which comments and inquiries may be directed.

**D.** A person who is seeking a construction permit pursuant to 20.11.41 NMAC shall complete a permit application and file one complete original and one duplicate copy with the department. A person who is seeking a general construction permit shall complete the applicable general construction form pursuant to Subsection C of 20.11.41.31 NMAC and file one complete original form and a duplicate copy with the department. All applications shall be submitted with the fee required by 20.11.2 NMAC.

**E. Application contents:** The following are the minimum elements that shall be included in the permit application before the department can determine whether the application is administratively complete and ready for technical review. It is not necessary to include an element if the department has issued a written waiver regarding the element and the waiver accompanies the application. However, the department shall not waive any federal requirements. The permit application shall include:

(1) a completed permit application form provided by the department;

(2) the name, street address and post office address, if any, of the applicant and the names, street addresses and post office addresses, if any, of the owner and all operators of the source if different than the applicant;

(3) the date the application was submitted to the department;

(4) sufficient attachments, including calculations, computations, EPA-approved air dispersion model as required, or models executed under a protocol as required that has been approved in advance and in writing by the department, and all other analyses used by the applicant to provide information to describe the potential emission rate and nature of all regulated air contaminants that the source may emit, and the actual emissions that the source will emit under routine operations after construction, modification, relocation or technical revision, and estimates of potential emissions during malfunction, startup and shutdown;

(5) an operational and maintenance strategy detailing:

(a) the steps the applicant will take if a malfunction occurs that may cause emission of a regulated air contaminant to exceed a limit that is included in the permit;

(b) the nature of emissions during routine startup or shutdown of the source and the source's air pollution control equipment; and

(c) the steps the applicant will take to minimize emissions during routine startup

or shutdown;

(6) a map, such as a 7.5 minute topographic quadrangle map published by the United States geological survey or a map of equivalent or greater scale, detail and precision, including a city of Albuquerque or county of Bernalillo zone atlas map that shows the proposed location of each process equipment unit involved in the proposed construction, modification, relocation or technical revision of the source;

(7) an aerial photograph showing the proposed location of each process equipment unit involved in the proposed construction, modification, relocation or technical revision of the source except for federal agencies or departments involved in national defense or national security as confirmed and agreed to by the department in writing;

(8) a complete description of all sources of regulated air contaminants and a process flow diagram depicting the process equipment unit or units at the facility, both existing and proposed, that are proposed to be involved in routine operations and from which regulated air contaminant emissions are expected to be emitted;

(9) a full description of air pollution control equipment, including all calculations and the basis for all control efficiencies presented, manufacturer's specifications sheets, and site layout and assembly drawings; UTM (universal transverse mercator) coordinates shall be used to identify the location of each emission unit;

(10) a description of the equipment or methods proposed by the applicant to be used for emission measurement;

(11) the maximum and normal operating time schedules of the source after completion of construction, modification, relocation or technical revision;

(12) any other relevant information as the department may reasonably require;

(13) the signature of the applicant, operator, owner or an authorized representative, certifying to the accuracy of all information as represented in the application and attachments, if any;

(14) a check or money order for the appropriate application fee or fees required by 20.11.2 NMAC, *Fees*; the fees are established to offset some or all of the reasonable costs of the department reviewing and acting upon an application for a permit and implementing and enforcing the terms and conditions of the permit, excluding costs associated with an enforcement action; and

(15) documentary proof that the applicant has complied with all public notice requirements, as required by Subsections B and C of 20.11.41.13 NMAC; documentary proof shall include proof of delivery of certified mail or e-mail of the public notice required by Paragraph (1) of Subsection B

of 20.11.41.13 NMAC and a photograph of each notice posted as required by Paragraph (2) of Subsection B of 20.11.41.13 NMAC.

**F. Changing, supplementing or correcting applications:**

(1) Before the department makes a final decision regarding the application, the applicant shall have a duty to promptly supplement and correct information the applicant has submitted in the application to the department. Applicant's duty to supplement and correct the application includes relevant information acquired after the applicant has submitted the application and additional information the applicant otherwise determines is relevant to the application and the department's review and decision.

(2) While the department is processing an application, regardless of whether the department has determined the application is administratively complete, if the department determines additional information is necessary to evaluate or make a final decision regarding the application, the department may request, and the applicant shall provide the requested additional information. The request shall be in writing, identify the additional information requested, the reason the additional information is needed, and set a reasonable deadline for a response. The applicant shall submit the requested information in writing to the department on or before the response deadline.

**G. Protection of confidential information:**

(1) All records, reports or information relating to permit applications obtained by the department or the board from any person shall be available to the public for inspection and copying, unless a person has made a satisfactory showing to the department or the board, as confirmed and agreed to by the department in writing, that specific items or information or parts thereof, if made public, would divulge: confidential business records, methods or processes entitled to protection as trade secrets; information pertaining to national defense; or information pertaining to national security. If the items or information are specifically marked by the person as confidential at the time of submittal, the department and the board shall then protect the items and information listed in Subparagraphs (a) and (b) of Paragraph (1) of Subsection G of 20.11.41.13 NMAC as confidential and not to be made a part of any public record unless the person expressly agrees, in writing, to its inspection, copying, or publication:

(a) records, reports or information relating to methods, processes or production techniques unique to the person, and

(b) data relating to the person's profits and costs or other confidential

business information which have not previously been released to the public.

(2) Subsection G of 20.11.41.13 NMAC shall not be construed to prohibit the release of information concerning the nature and amount of emissions from any source.

(3) The department shall review all claims of confidentiality made by any person pursuant to 20.11.41 NMAC and shall notify the person of the department's determination by certified mail or electronic mail in a timely manner and shall include the reasons for the decision. The burden of proof for claims of confidentiality shall be upon the person submitting such claim.

(4) The department's determination regarding claims made pursuant to Subsection G of 20.11.41.13 NMAC shall be the final administrative determination.

(5) The department shall protect information claimed and subsequently found to be confidential in accordance with the provisions of 74-2-11 NMSA 1978 and 18 U.S.C. Section 1905, except that any such record, report or information may be disclosed:

(a) to other officers, employees or authorized representatives of the department, the board and the EPA; or

(b) in any proceeding pursuant to the federal act or the state act, when relevant. [20.11.41.13 NMAC - Rp, 20.11.41.13 NMAC, 1/1/14]

**20.11.41.14 PUBLIC NOTICE BY DEPARTMENT - PUBLIC PARTICIPATION:**

**A.** The department shall maintain a list of all pending applications for permits available for public inspection.

**B.** If the department makes an affirmative administrative completeness determination then:

(1) the department shall make the permit application and all supporting documentation available for public inspection at the department's air quality division office at One Civic Plaza NW, Albuquerque, NM 87102;

(2) the department shall publish the public notice in the newspaper with the largest general circulation in Bernalillo county; the notice shall state:

(a) the applicant's name and address;

(b) the proposed or existing location;

(c) a brief description of the source and related facility, if any;

(d) a brief preliminary summary of proposed emissions and the proposed net emissions increase if a permit modification is proposed;

(e) the ambient air quality impact as determined by air dispersion modeling, if required by the department;

(f) the location where the permit application and the department's analysis if completed, are available for public review; the notice shall clearly state that any person who does not express such interest in writing prior to the end of the initial 30 day comment period will not receive notification of the availability of the analysis and so alert such a person of the need to express interest in writing if they desire to review and comment on the analysis;

(g) that the public has 30 days to submit written comments and evidence to the department regarding the proposed permit or to request a PIH regarding the application or both; the notice shall specify the date by which all comments and evidence or a request for a PIH shall be submitted;

(h) that the department shall hold a PIH pursuant to 20.11.41.15 NMAC if the director determines there is significant public interest and a significant air quality issue is involved; and

(i) that any person who does not participate in the permitting action will not receive notification of the department's decision regarding the proposed permit, unless the person has delivered a written request for notice to the department;

(3) the department shall provide the notice required by Paragraph (2) of Subsection B of 20.11.41.14 NMAC by regular mail or electronic mail to all individuals and organizations identified on a list maintained by the department of persons who have stated in writing a desire to receive notices of all applications filed pursuant to 20.11.41 NMAC;

(4) the department shall allow all interested persons 30 days from the date the public notice is published to deliver to the department written comment and evidence regarding the application for a permit;

(5) the department shall send notice of the department's action regarding the permit application and the reasons for the action to every person who participated in the permitting action; a request to inspect or copy shall not be considered participation for the purposes of Paragraph (5) of Subsection B of 20.11.41.14 NMAC; the applicant shall be notified by certified mail or electronic mail; all other interested persons who participated shall be notified by regular mail or electronic mail;

(6) the department shall provide a copy of the public notice by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions, that are within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be located; contact information, if available, shall be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county

of Bernalillo zoning, building and planning department;

(7) the department shall mail a copy of the public notice by regular or electronic mail to every person who submits a written request for a copy to the department;

(8) the department shall mail a copy of the public notice by regular or electronic mail to the state of New Mexico environment department within five days after the department deems the application complete; the department shall also mail a copy of the public notice by regular or electronic mail to EPA Region VI, if requested; and

(9) the department shall mail a copy of the public notice by regular or electronic mail to all municipalities, Indian tribes and counties that are within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be located.

**C.** If a person expresses in writing an interest in the permit application, the department shall:

(1) notify that person of the date that the department's analysis was or will be available for review and where the analysis may be obtained; and

(2) not issue the permit until at least 30 days after the department's analysis is available for review. During the 30 day period, any person may submit written comments or request a PIH.

[20.11.41.14 NMAC - Rp, 20.11.41.14 NMAC, 1/1/14]

**20.11.41.15 PUBLIC INFORMATION HEARING (PIH):**

**A.** Before the department makes a final decision regarding a permit application, the department shall hold a PIH if the director determines that there is significant public interest and a significant air quality issue is involved. A PIH is not an adjudicatory hearing on the merits. The PIH shall be held no fewer than 30 days before the deadline for the department to make a final decision regarding the permit application. The hearing officer shall determine whether to require attendees to be sworn before they can ask questions, provide comments or provide information. During the PIH, attendees can ask questions, provide comments and provide information regarding the requested air quality permitting action, but no final decision shall be made by the department at the close of the hearing.

**B.** The department shall make all arrangements and pay all expenses of the hearing including:

(1) arranging for a location for the PIH, which shall be held near the proposed source if reasonably feasible;

(2) providing an English-Spanish and Spanish-English translator at the PIH if determined to be necessary by the



department;

(3) providing a hearing officer; the hearing officer shall preside over the PIH; shall give all attendees present at the hearing a reasonable opportunity to ask questions, provide comments and provide information regarding the requested air quality permitting action and to examine attendees commenting at the hearing; but shall not make a recommendation or a final decision regarding the permit application;

(4) requesting that the applicant present its proposal and to answer questions from attendees at the PIH;

(5) no fewer than 10 days before the PIH, providing a copy of the public notice by certified mail or electronic mail to the applicant, the designated representative(s) of the recognized neighborhood associations and recognized neighborhood coalitions that are within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be located; contact information, if available, shall be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department; the notice shall contain the information required by Paragraphs (1) and (3)-(5) of Subsection C of 20.11.41.13 NMAC, and the name of the contact person, the department and the address to which comments and inquiries may be directed; the notice of the PIH shall be in English and Spanish if the department determines notice in Spanish is necessary; if a PIH notice is returned to the department undelivered, the department shall promptly confirm the address through the appropriate local government entity, and, if an address is available, shall provide a second copy of applicant's PIH notice to the president or vice president of the neighborhood association or neighborhood coalition;

(6) publishing public notice of the PIH in the newspaper with the largest general circulation in Bernalillo county no fewer than 10 days before the PIH; the notice shall include the date, time, and location of the PIH, the number of the proposed permit, and a statement that a final decision has not been made by the department regarding the proposed permit;

(7) mailing notice of the PIH to all interested persons who have submitted written comments or evidence to the department and to all interested persons who have delivered to the department a written request for notice regarding the application; a request to inspect or copy shall not be considered a written comment for the purposes of Paragraph (7) of Subsection B of 20.11.41.15 NMAC;

(8) requiring department staff to attend the PIH; be present during the applicant's requested presentation and the

comments and questions by the attendees; and answer questions regarding the application and the permitting process; and

(9) recording the PIH and including the recording in the administrative record for the permit application; the department shall provide a duplicate of the recording to any person who requests a copy; the person requesting shall reimburse the department for the cost of the copy before the department makes the copy; the person making the request for a copy may instead provide the department with recording media that meets the department specifications, and the department will not impose a charge for copying; if a person requests a transcript of the hearing (the requestor), the department shall obtain an estimate of the cost of the transcription and inform the requestor; the requestor shall pay the estimated cost before the department orders the transcription; if the actual cost of the transcription is more than the estimate, the requestor shall pay the additional amount before the department provides the transcription; if the actual cost of the transcription is less than the estimate, the department shall reimburse the difference.

[20.11.41.15 NMAC - Rp, 20.11.41.15 NMAC, 1/1/14]

#### **20.11.41.16 PERMIT DECISION AND AIR BOARD HEARING ON THE MERITS:**

**A.** Within 30 days after the department has received an application for a new permit or permit modification, the department shall review the application and determine whether it is administratively complete.

(1) If the application is deemed administratively complete, the department shall send a letter by certified mail or electronic mail to the applicant stating the department's determination.

(2) If the application is deemed administratively incomplete or the department determines a different type of permit application is required, the department shall send a letter by certified mail or electronic mail to the applicant stating what additional information or fees are necessary before the department can deem the application administratively complete. The department may require information that is necessary to perform a thorough review of the application including: technical clarifications, emission calculations, emission factor usage, additional application review fees if any are required by 20.11.2 NMAC and new or additional air dispersion modeling. The letter shall state a reasonable deadline for the applicant to deliver the information, fees or air dispersion modeling. The applicant shall deliver the requested information, fees or air dispersion modeling by the deadline set by

the department. The department may extend the deadline for good cause as determined by the department. If the department does not receive the additional information, fees or modeling by the deadline, the department may deny the application. If the department has ruled an application administratively incomplete three times, the department shall deny the permit application and send a letter by certified mail or electronic mail to the applicant stating that the permit application has been denied. Fees submitted for processing an application that has been denied shall not be refunded. If the department has denied the application, the applicant may submit a new application and the fee required for a new application.

(3) If the department determines the application is administratively complete but no permit is required, the department shall send a letter by certified mail or electronic mail to the applicant informing the applicant of the determination.

**B.** Within 90 days after the department has deemed the application administratively complete, the department shall issue the permit, issue the permit subject to conditions or deny the permit as authorized by the state act, unless the director grants an extension for not more than 90 days for good cause, including scheduling a PIH. If an extension of the 90 day deadline is needed to review and make a decision regarding the application, then 90 days after the department has deemed the application administratively complete, the department shall notify the applicant by certified mail or electronic mail that an extension of time is required. The notification shall specify in detail the grounds for the extension.

**C.** The department shall issue the permit, issue the permit subject to conditions or deny the requested permit or permit modification based on information contained in the department's administrative record of the permit application. The administrative record shall consist of the application, all other evidence submitted by the applicant, all evidence or written comments submitted by interested persons, all other evidence considered by the department, a statement of matters officially noticed and, if a PIH has been held, the PIH hearing record. The applicant has the burden of demonstrating that a permit should be issued.

**D.** Every person who participated in a permitting action before the department shall be notified by the department of the action taken and the reasons for the action. A request to inspect or copy information contained in the department's administrative record of the permit application shall not be considered participation for purposes of Subsection D of 20.11.41.16 NMAC. The department shall notify the applicant by certified mail

as required by the state act. Applicants that request expedited receipt of the notification instead of receiving notice by certified mail may deliver a written request to the department and have an authorized representative of the applicant pick up the notification at the department. The authorized representative shall acknowledge receipt of the notification in writing. The department shall notify all other participating persons by regular mail sent to the legible address the participating person has provided to the department. Notification by mail shall be deemed complete and received three days after mailing postage paid to the participating person's address provided to the department.

**E.** A person who participated in a permitting action before the department and who is adversely affected by the permitting action may file a petition for hearing before the board. A request to inspect or copy shall not be considered participation for the purposes of Subsection E of 20.11.41.16 NMAC. The petition shall be in writing and shall be delivered to the board within 30 days from the date notice is given of the department's action. The petition shall conform to the requirements of Subsection B of 20.11.81.14 NMAC. The petitioner shall certify that a copy of the petition has been mailed or hand delivered to the applicant if the petitioner is not the applicant. A hearing before the board shall be conducted as required by 20.11.81 NMAC. Unless a timely request for a hearing is made, the decision of the department shall be final.

**F.** If a timely request for a hearing is made, the board shall hold an adjudicatory hearing on the merits within 60 days of receipt of the petition as required by the state act at NMSA 1978, Section 74-2-7(I) and 20.11.81 NMAC. In the hearing before the board, the burden of proof shall be on the petitioner as required by the state act at NMSA 1978, Section 74-2-7(K).

**G.** Any person adversely affected by an administrative action taken by the board may appeal in accordance with the state act at 74-2-9 NMSA 1978.

[20.11.41.16 NMAC - Rp, 20.11.41.15 NMAC, 1/1/14]

**20.11.41.17 BASIS FOR PERMIT DENIAL:** After the department has deemed a permit application administratively complete, the department may deny the application if:

**A.** the department determines the proposed construction, modification or technical revision will not meet an applicable standard, rule, regulation, provision or requirement of the federal act, the state act or a board regulation;

**B.** the department determines the source will cause or

contribute to air contaminant levels in excess of a national or New Mexico ambient air quality standard;

**C.** the source will emit a hazardous air pollutant for which no NESHAP applies, if the HAP is emitted in a quantity and duration that may cause imminent danger to public health;

**D.** the department determines the construction, modification or technical revision would cause or contribute to ambient concentrations in excess of a prevention of significant deterioration (PSD) increment;

**E.** the department concludes that construction of a proposed new or modified source cannot or will not be completed within a reasonable time as determined by the department;

**F.** the department determines a conflict of interest existed or exists regarding an application that was submitted during accelerated review, as authorized by 20.11.41.32 NMAC;

**G.** the emission data that was submitted by the applicant as part of the application is not acceptable to the department for technical reasons;

**H.** the estimated emissions of air contaminants submitted by the applicant have not been appropriately identified or quantified;

**I.** the issuance of a permit, permit modification or technical revision will not be consistent with achieving progress toward attainment of the state ambient air quality standard that is being exceeded; or

**J.** the department has delivered three written notices requiring the applicant to provide specified information the department needs in order to take final action on the application and the applicant either has not provided the information by the deadline stated in the related notification or the applicant has submitted information that the department has determined to be technically unacceptable; the department may agree in writing to extend the deadline for good cause as determined by the department; a department request for information shall be for information that is necessary for the department to perform a thorough review of the application and to take final action on the application and may include technical clarifications, emission calculations, emission factor usage and replacement of air dispersion modeling.

[20.11.41.17 NMAC - Rp, 20.11.41.16 NMAC, 1/1/14]

**20.11.41.18 APPLICANTS' ADDITIONAL LEGAL RESPONSIBILITIES:** The issuance of a permit does not relieve any person from responsibility for complying with applicable provisions of the federal act, the state act or a regulation of the board.

[20.11.41.18 NMAC - Rp, 20.11.41.17 NMAC, 1/1/14]

**20.11.41.19 PERMIT CONDITIONS:**

**A.** The contents of a permit application specifically identified by the department shall become terms and conditions of the permit.

**B.** The department shall impose conditions upon a permit as authorized by the state act and as the department determines to be appropriate, including:

(1) placement of individual emission limits on the source for which the permit is issued, as determined on a case-by-case basis, but the individual emission limits shall be only as restrictive as the more stringent of the following:

(a) the extent necessary to meet the requirements of the federal act, state act or board regulations; or

(b) the emission rate specified in the permit application;

(2) a requirement that the source install and operate control technology, determined on a case-by-case basis, sufficient to meet the requirements of the federal act, state act or board regulations;

(3) compliance with applicable NSPS and NESHAP;

(4) imposition of reasonable restrictions and limitations to prevent or abate air pollution not relating to emission limits or emission rates; examples include monitoring, recordkeeping and reporting; reporting administrative revisions; notifications; posting of permit; and substitution of equipment not resulting in an increase in emissions;

(5) any combination of the above; and

(6) in the case of a modification, the requirements of Subsection B of 20.11.41.19 NMAC apply only to the emission units involved in the modification.

**C.** The department may impose additional conditions in order to meet requirements of the federal act, the state act or a board regulation including:

(1) a schedule of construction;

(2) a condition requiring timely revision of permit terms or conditions;

(3) sampling ports of a size, number and location as the department may require;

(4) safe access to each port;

(5) instrumentation to monitor and record emission data including continuous emission monitoring;

(6) any other reasonable sampling, testing and ambient monitoring and meteorological facilities and protocols;

(7) periodic testing pursuant to 20.11.41.22 NMAC, *Performance Testing*;

(8) maintaining records of the

nature and amount of emission;

(9) periodic reports to the department regarding the nature and amounts of emissions;

(10) maintaining records of air pollution control equipment performance; and

(11) monitoring, recordkeeping and reporting for hours of operation, throughput, capacity and other parametric information.

**D.** Every term or condition included in a permit is enforceable to the same extent as a regulation of the board.

[20.11.41.19 NMAC - Rp, 20.11.41.18 NMAC, 1/1/14]

**20.11.41.20 PERMIT CANCELLATION, SUSPENSION OR REVOCATION:**

**A.** The department shall cancel any permit for any source that ceases operation for five years or more, or permanently. Reactivation of any source after the five year period shall require a new permit.

**B.** The department may cancel a permit if the construction or modification is not commenced within two years from the date of issuance or, if during the construction or modification, work is suspended for a total of one year, such cancellation shall be subject to the following procedures:

(1) at least 30 days before canceling a permit, the department shall notify the permittee by certified mail of the impending cancellation; upon cancellation, the department shall notify the permittee by certified mail of the cancellation of the permit and the reasons therefor; construction, modification and, if required, interim operation shall cease upon the effective date of cancellation contained in the notice of cancellation; a permittee who has received notice that a permit is or will be cancelled may request a hearing before the board; the request must be made in writing to the board within 30 days after the notice of the department's action has been received by the permittee; unless a timely request for hearing is made, the decision of the department shall be final; and

(2) if a timely request for hearing is made, the board shall hold a hearing within 60 days after receipt of the request; the department shall notify the requestor by certified mail of the date, time and place of the hearing; in the hearing, the burden of proof shall be upon the requestor; the board may designate a hearing officer to take evidence in the hearing; based upon the evidence presented at the hearing, the board shall sustain, modify or reverse the action of the department; the hearing shall be conducted pursuant to 20.11.81 NMAC.

**C.** As authorized by the

state act at NMSA 1978, Section 74-2-12, a violation of a requirement of the state act, a board regulation or a condition of a permit that has been issued pursuant to 20.11.41 NMAC may result in suspension or revocation of the permit. If the department initiates an enforcement action to suspend or revoke a permit, the department and the permittee shall comply with the procedures required by 20.11.80 NMAC, *Adjudicatory Procedures - Administrative Enforcement Hearings by Director*.

[20.11.41.20 NMAC - N, 1/1/14]

**20.11.41.21 PERMITTEE'S OBLIGATION TO INFORM THE DEPARTMENT AND DELIVER AN ANNUAL EMISSIONS INVENTORY:**

**A.** After a permit is issued pursuant to 20.11.41 NMAC, the permittee shall inform the department by letter, facsimile or electronic mail of:

(1) the date of anticipated initial startup of the source no fewer than 30 days before the anticipated initial startup date;

(2) the date of anticipated initial startup of a portable stationary source no fewer than two days before the anticipated initial startup date;

(3) the date of actual initial startup of the source or portable stationary source no more than 15 days after actual startup has occurred;

(4) the date a portable stationary source leaves or returns to Bernalillo county;

(5) any change of ownership, operator or permittee no more than 15 days after the change has occurred; and

(6) any permit update or correction as required by 20.11.41 NMAC no more than 60 days after the permittee knows or should have known about the condition that requires updating or correction of the permit.

**B.** The permittee shall submit an annual emissions inventory to the department as required by 20.11.47 NMAC, *Emissions Inventory Requirements*.

[20.11.41.21 NMAC - Rp, 20.11.41.20 NMAC, 1/1/14]

**20.11.41.22 PERFORMANCE TESTING:**

**A.** Within 60 days after achieving the maximum production rate at which the newly constructed or modified stationary source will be operated, but not later than 180 days after initial startup of the newly constructed or modified source, the owner or operator of the source may be required to conduct a performance test at the permittee's expense and in accordance with methods and under operating conditions approved by the department and to furnish the department with a written report of the results of the test. No more than 30 days after the test is completed, the permittee shall deliver the written report of the test results

to the department. The permittee shall allow a representative of the department to be present at the test. The department may require the permittee to repeat the performance tests at the permittee's expense until compliance is demonstrated and testing is performed in a technically satisfactory manner as determined by the department.

**B.** The department may require the permittee to perform initial testing or additional testing if the department determines that:

(1) an inspection of the source indicates noncompliance with any regulation or permit condition;

(2) previous testing indicated noncompliance with emission limits established by the permit; or

(3) the test was technically unsatisfactory.

**C.** The permittee shall conduct performance testing at the permittee's expense as frequently as the department requires to determine that the source being tested demonstrates compliance with the permit. The department may waive testing; reduce testing frequency; extend testing deadlines; or authorize performance testing at less than 90% of the maximum production rate, rated capacity, or permitted rate if the permittee delivers a written request to the department no fewer than 60 days before the test. The department shall review all requests and notify the permittee of its decision in writing no fewer than 30 days before the performance test. The department's determination shall be final.

[20.11.41.22 NMAC - Rp, 20.11.41.21 NMAC, 1/1/14]

**20.11.41.23 TEMPORARY RELOCATION OF PORTABLE STATIONARY SOURCES:**

**A.** Portable aerospace ground equipment exempted by Subparagraph (f) of Paragraph (2) of Subsection F of 20.11.41.2 NMAC and portable support equipment exempted by Subparagraph (g) of Paragraph (2) of Subsection F of 20.11.41.2 NMAC are not subject to the requirements of 20.11.41.23 NMAC.

**B.** The permittee of a portable stationary source may submit a written request to the department seeking approval to temporarily relocate and operate the portable stationary source. Temporary relocations shall not exceed a total of 365 consecutive days.

**C.** The permittee of a portable stationary source shall not construct or operate at the new location until the department approves the relocation request in writing.

**D.** The permittee of a portable stationary source shall submit a relocation application no fewer than 45



days before the date the permittee proposes to commence operations at a new location within Bernalillo county. The permittee shall operate the portable stationary source at the proposed new location as required by the permit conditions unless the department imposes additional or more restrictive operational requirements or conditions in writing during the approval process. The relocation application shall:

(1) be submitted on forms provided by the department with fee required by 20.11.2 NMAC;

(2) include for each process unit an equipment list that shall include make, model and manufacture date; serial number; rated capacity; production rates; and emissions estimates;

(3) include a description of all stationary sources that have an air quality source registration or permit, and all residences, offices, schools, community centers and medical facilities that are located within one-quarter of a mile of the proposed new location of the portable stationary source;

(4) unless waived in writing by the department, include an EPA-approved air dispersion model executed for the proposed new location that demonstrates compliance with the NAAQS and the NMAAQs; the modeling protocol shall comply with the air dispersion modeling requirements of Paragraph (4) of Subsection E of 20.11.41.13 NMAC;

(5) include all information required by 20.11.41.13 NMAC determined to be relevant by the department and all additional information the department reasonably requires; and

(6) be signed by the operator, owner or an authorized representative certifying to the accuracy of all information included in the application and any attachments.

**E.** The department may take into consideration the proposed duration of operation, the proposed location, the nature and amount of emissions, anticipated public concerns and other relevant factors in determining whether to require public notice as specified in Subsection B of 20.11.41.13 NMAC. At a minimum, at the time the relocation application is submitted, the permittee shall provide proof that a weather-proof sign provided by the department has been posted at the more visible of either the proposed or existing facility entrance or other location on the property boundary. The applicant shall list on the sign all information required by Subsection C of 20.11.41.13 NMAC. The weather-proof sign shall remain posted and maintained until the department makes a final decision regarding the location request.

**F.** The department may hold a PIH for good cause.

**G.** The department may

deny the request to relocate the portable stationary source if the relocation application does not include all information required by Subsection D of 20.11.41.23 NMAC, or if the relocation application is submitted to the department fewer than 45 days before the proposed relocation date.

**H.** The department shall not approve the relocation if the department determines the relocation will result in an exceedance of any NAAQS or NMAAQs at the proposed new location.

**I.** No more than 45 days after the department receives the relocation application, the department shall approve the relocation, deny the relocation, approve the relocation with conditions or hold a PIH regarding the relocation request. The department shall notify the permittee by certified mail regarding the department's decision.

**J.** If the stationary source has been issued a permit pursuant to a board regulation but has not been designated in the permit as a portable stationary source, and the source wishes to relocate within Bernalillo county or be classified as a portable stationary source, the request to relocate or reclassify the source shall be treated as a proposed permit modification and the permittee shall comply with the requirements of 20.11.41.29 NMAC.

[20.11.41.23 NMAC - N, 1/1/14]

#### **20.11.41.24 E M E R G E N C Y PERMITS:**

**A.** The department may issue an emergency permit when the director determines an emergency situation exists that threatens public health, safety or welfare, and that a source subject to 20.11.41 NMAC should be immediately constructed, modified or relocated in order to mitigate, prevent or remedy the emergency.

**B.** In order to ensure that the public emergency is not worsened by excess emissions or inadequate air pollution control equipment, the department shall verify that the source, when operating in accordance with the permit to be issued, can and will meet all applicable standards, emission limitations and conditions before the department authorizes startup.

**C.** If the department makes an affirmative administrative completeness determination regarding a request for an emergency permit and the department decides to issue the emergency permit, then the department shall:

(1) make the request for an emergency permit, the issued emergency permit and all supporting documents available for public inspection at the department's air quality division office at One Civic Plaza NW, Albuquerque, New Mexico 87102;

(2) publish public notice in

the newspaper with the largest general circulation in Bernalillo county; the notice shall state:

(a) the applicant's name and address, the proposed or existing location, a brief description of the source, a brief summary of proposed emissions and ambient air quality impacts as determined by air dispersion modeling if required by the department, the department's approval of the request for an emergency permit and that the department has issued the emergency permit;

(b) the location where the request for the emergency permit, the emergency permit and the department's analysis are available for public review;

(c) that the public has 30 days to submit written comment and evidence to the department regarding the emergency permit, the deadline for submitting written comments and evidence; and

(d) that the department shall hold a PIH pursuant to 20.11.41.15 NMAC if the director determines there is significant public interest and a significant air quality issue is involved;

(3) provide the notice required by Paragraph (2) of Subsection C of 20.11.41.24 NMAC by regular mail or electronic mail to all individuals and organizations identified on a list maintained by the department of persons who within the previous 12 months have delivered to the department a written request for notice of all applications filed pursuant to 20.11.41 NMAC;

(4) provide a copy of the public notice required by Paragraph (2) of Subsection C of 20.11.41.24 NMAC by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions, that are within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be located; contact information, if available, shall be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department; and

(5) allow all interested persons 30 days from the date the public notice is published to deliver to the department written comment and evidence regarding the emergency permit.

**D.** If a person violates a board regulation or permit condition, including failure to apply in a timely manner for a permit, permit modification, relocation or technical revision, then the violation shall not qualify as an emergency for the purposes of 20.11.41.24 NMAC.

**E.** The following requirements shall not apply to emergency permits processed pursuant to 20.11.41.24 NMAC: Subsection B of 20.11.41.13 NMAC

and Subsections A and B of 20.11.41.16 NMAC.

**F.** The permittee shall not commence emergency construction, modification or relocation until the department has issued an emergency permit. [20.11.41.24 NMAC - Rp, 20.11.41.22 NMAC, 1/1/14]

**20.11.41.25 NONATTAINMENT AREA REQUIREMENTS:**

**A. Applicability:**

20.11.41.25 NMAC applies to:

(1) a new source or modification of an existing source that will emit a regulated air contaminant that will cause an ambient impact of the contaminant in excess of a significant ambient concentration established in 20.11.41.33 NMAC, *Significant Ambient Concentrations - Nonattainment*, Table 1, at a location that does not meet the standards incorporated in 20.11.8 NMAC, *Ambient Air Quality Standards*, for that contaminant;

(2) a new source or modification of an existing source that is not a major stationary source or major modification as defined in 20.11.60 NMAC, *Permitting in Nonattainment Areas*, and will emit a regulated air contaminant that will cause an ambient impact of the contaminant in excess of a significant ambient concentration established in 20.11.41.33 NMAC, *Significant Ambient Concentrations - Nonattainment*, Table 1, at a location that does not meet the NAAQS for that contaminant; and

(3) an existing source that does not propose an increase in emissions but emits or will emit a regulated air contaminant that will cause an ambient impact of the contaminant in excess of a significant ambient concentration included in 20.11.41.33 NMAC, *Significant Ambient Concentrations - Nonattainment*, Table 1, at any location that does not meet the 20.11.8 NMAC standards for that contaminant.

**B.** A new source or modification of an existing source subject to 20.11.41.25 NMAC shall offset the ambient impact of its emissions by:

(1) obtaining emission offsets for proposed emissions in an amount greater than one-to-one so that a net air quality benefit will result; and

(2) ensuring emission offsets are quantifiable, enforceable and permanent by complying with the following sections of 20.11.60 NMAC:

(a) 20.11.60.15, *Baseline for Determining Credit for Emission and Air Quality Offsets*;

(b) 20.11.60.18 NMAC, *Emission Offset Ratio*; and

(c) 20.11.60.25 NMAC, *Air Quality Benefit*.

**C.** An existing source that is subject to 20.11.41.25 NMAC shall

demonstrate a net air quality benefit of at least a 20 percent reduction in ambient impact for each applicable contaminant. The 20 percent reduction shall be calculated by subtracting the projected source impact from the existing source impact and dividing the result by the existing source impact. The net air quality benefit shall also comply with 20.11.60.25 NMAC, *Air Quality Benefit*.

[20.11.41.25 NMAC - Rp, 20.11.41.24 NMAC, 1/1/14]

**20.11.41.26 COMPLIANCE CERTIFICATION:**

**A.** Notwithstanding any other provision in the New Mexico state implementation plan for air quality, a permittee may use monitoring required by 20.11.42 NMAC, *Operating Permits*, in addition to compliance methods specified in a permit issued to the source for the purpose of submitting a compliance certification.

**B.** 20.11.41.26 NMAC applies only to sources that are subject to 20.11.41 NMAC and are defined as a major source in 20.11.42 NMAC, *Operating Permits*.

[20.11.41.26 NMAC - Rp, 20.11.41.25 NMAC, 1/1/14]

**20.11.41.27 ENFORCEMENT:**

Notwithstanding any other provision in the New Mexico state implementation plan for air quality, any credible evidence may be used to determine whether a person has violated or is in violation of the terms or conditions of a permit issued pursuant to 20.11.41 NMAC, including a permit issued to a source that meets the applicability requirements 20.11.61 NMAC, *Prevention of Significant Deterioration*, or 20.11.60 NMAC, *Permitting in Nonattainment Areas*.

**A.** Information obtained by using the following methods is presumptively credible evidence of whether a violation has occurred at a source:

(1) a monitoring or information-gathering method approved for the source pursuant to 20.11.42 NMAC and incorporated in a 20.11.42 NMAC operating permit; or

(2) compliance methods specified by the New Mexico state implementation plan for air quality.

**B.** The following are presumptively credible testing, monitoring or information gathering methods:

(1) any federally enforceable monitoring or testing method, including methods authorized or required by 40 CFR, parts 51, 60, 61, 63 and 75; and

(2) other testing, monitoring or information gathering methods that produce information comparable to information produced by any method authorized by Subsection A of 20.11.41.27 NMAC or Paragraph (1) of Subsection B of 20.11.41.27

NMAC, as determined by the department.

[20.11.41.27 NMAC - Rp, 20.11.41.26 NMAC, 1/1/14]

**20.11.41.28 ADMINISTRATIVE AND TECHNICAL PERMIT REVISIONS:**

**A. Administrative permit revision:**

(1) An administrative permit revision may be used by the department or requested by a permittee to revise a permit that has been issued pursuant to 20.11.41 NMAC in order to:

(a) correct a typographical error;

(b) identify a change in ownership, name, address or contact information of any person identified in the permit; or

(c) incorporate a change in the permit if the change is limited to retiring an emission unit at the facility, which shall be effective when the department receives written notice that the emission unit has ceased operation; and

(d) incorporate a change in the permit to include a source or activity at the facility if the facility or activity is exempted by Paragraph (3) of Subsection F of 20.11.41.2 NMAC.

(2) An administrative permit revision shall:

(a) not be subject to Subsection B of 20.11.41.13 NMAC, *Applicant's Public Notice Requirements*;

(b) not be subject to 20.11.41.14 NMAC, *Public Notice by Department - Public Participation*;

(c) be subject to 20.11.41.12 NMAC, *Fees for Permit Application Review*; and

(d) be submitted on forms provided by the department.

(3) When the department receives a revision form, the department shall review the form. If the department determines the revision qualifies as an administrative revision, the department shall file the revision with the permit. However, the procedure authorized by Subsection A of 20.11.41.28 NMAC may not be used to create federally enforceable conditions or emissions limitations to avoid any applicable requirement.

**B. Technical permit revision:**

(1) A technical permit revision may be requested by a permittee:

(a) to incorporate a change in the permit if the change only involves a change in monitoring, record keeping or reporting requirements, if the department determines the change does not reduce the enforceability of the permit;

(b) to incorporate a change in the permit that only involves additional equipment with a potential emission rate of no more than one pound per hour for



any pollutant for which a national or New Mexico ambient air quality standard has been set or one pound per hour for any VOC if the increase in potential emission rate does not result in an exceedence of the applicable ambient standard;

(c) to incorporate a change in the permit if the change only involves incorporating permit conditions, including emissions limitations, but only if the source existed on August 31, 1972, and the source has been in regular operation since that date;

(d) if the permittee wishes to impose a voluntary reduction of an emission limitation that was included as a specific permit conditions pursuant to Subsection B of 20.11.41.19 NMAC, *Permit Conditions*;

(e) to incorporate a change at a facility by replacing an emissions unit for which an allowable emissions limit has been established in the permit, but only if the replacement emissions unit as determined by the department:

(i) is equivalent to the replaced emissions unit and serves the same function within the facility and process;

(ii) has the same or lower capacity and potential emission rates;

(iii) has the same or higher control efficiency and stack parameters that are at least as effective in dispersing air pollutants;

(iv) would not result in an increase of the potential emission rate of any other equipment at the facility;

(v) is subject to the same or lower allowable emissions limits as the current permit prior to making the replacement and to all other original permit conditions prior to making the technical permit revision request;

(vi) will not cause or contribute to a violation of any NAAQS and NMAAQs when operated under applicable permit conditions;

(vii) will not require additional permit conditions to ensure the enforceability of the permit, such as additional record keeping or reporting in order to establish compliance; and

(viii) does not emit a regulated air contaminant not previously emitted;

(f) to reduce the potential emission rate of a unit or source, by incorporating terms and conditions in the permit, such as a cap on hours of operation, limitations on throughput of a specific product or products, or limitations on equipment capacity; or

(g) to incorporate a change in the permit that only involves the addition of air pollution control equipment or the substitution of a different type of air pollution control equipment to existing equipment if the requested addition or substitution shall not result in an increase in the potential emission rate of more than one pound per

hour for any pollutant for which a national or New Mexico ambient air quality standard has been set, or one pound per hour for total VOCs if the increase in potential emission rate does not result in an exceedence of the applicable ambient standard.

(2) An application for a technical revision to a permit shall:

(a) be subject to Paragraph (1) of Subsection B of 20.11.41.13 NMAC, *Applicant's Public Notice Requirements*;

(b) be subject to 20.11.41.12 NMAC, *Fees for Permit Application Review*;

(c) not be subject to 20.11.41.14 NMAC, *Public Notice by Department - Public Participation*; and

(d) be submitted on forms provided by the department, with all information submitted by the applicant certified as required by Paragraph (13) of Subsection E of 20.11.41.13 NMAC.

(3) Within 30 days of receipt of the application, the department shall approve or deny the application for the technical permit revision, or inform the applicant in writing that the request must be submitted as a permit modification.

(4) If in response to significant public interest the director decides to hold a PIH pursuant to 20.11.41.15 NMAC, the department shall inform the applicant and conduct the PIH within 90 days of receipt of the technical permit revision application.

(5) The department may deny an application for a technical permit revision or require that the application be submitted as a permit modification if:

(a) the revision does not meet the criteria included in Subsection B of 20.11.41.28 NMAC;

(b) in the judgment of the department, the revision would require a decision on a significant or complex issue, or involve a substantive change; or

(c) in the judgment of the department, the permittee has submitted multiple or subsequent applications for technical permit revisions under 20.11.41.28 NMAC that segment a larger revision or modification that otherwise would not be eligible for a technical permit revision.

(6) The technical permit revision shall become effective when approved in writing by the department. The department shall file the technical permit revision with the permit. However, the procedure established in 20.11.41.28 NMAC may not be used to create federally enforceable conditions or emissions limitations to avoid an applicable requirement.

[20.11.41.28 NMAC - N, 1/1/14]

**20.11.41.29 PERMIT MODIFICATION:** A person who proposes to modify a stationary source shall comply with all requirements of 20.11.41 NMAC. Applications for permit modifications

shall be processed in accordance with all requirements established by 20.11.41 NMAC for permit applications, including public notice, review, fees and hearing procedures.

[20.11.41.29 NMAC - N, 1/1/14]

**20.11.41.30 PERMIT REOPENING, REVISION AND REISSUANCE:**

**A.** The department may impose reasonable terms and conditions upon a permit, including a schedule of construction, the maximum period of time the permit shall be valid and a condition requiring timely revision of permit terms or conditions in order to meet new requirements, if any, under any federally required and approved state implementation plan revision. The department may reopen, revise and reissue a permit if the department determines:

(1) additional applicable requirements of the federal Act or the state act become applicable to the source, including excess emission requirements under the Title IV acid rain program;

(2) the permit contains a substantive material mistake or that an inaccurate statement was made in the permit application that resulted in incorrect or inappropriate evaluation of ambient air quality impacts or incorrect or inappropriate terms and conditions in the permit, including emissions limitations;

(3) the permit requires reopening, revision and reissuance to ensure compliance with all applicable requirements of the federal act, the state act and the board regulations;

(4) the permittee failed to disclose a material fact or a regulation that is applicable to the source as required in the permit application process, and the applicant knew or should have known about the material fact or regulation at the time the application was submitted; or

(5) the terms and conditions of a permit have not been or are not being met, as determined by the department.

**B.** The department shall notify the permittee by certified mail no fewer than 60 days before the date the department reopens the permit, except a shorter time period may be specified by the department in case of an emergency. The notification shall include a description of the reason or grounds for the reopening, the revisions required and any information that shall be submitted to the department by the permittee. The permittee shall submit all required additional information to the department no later than 30 days after receipt of the notification from the department. A permittee may request additional time to provide required information by delivering a written request to the department. The

extension of time shall be effective if approved in writing by the department.

**C.** A permit that has been reopened and reissued may be appealed pursuant to 20.11.81 NMAC. [20.11.41.30 NMAC - N, 1/1/14]

**20.11.41.31 G E N E R A L CONSTRUCTION PERMITS:**

**A. General construction permits:** General construction permits are issued to groups of sources that have similar operations, processes and emissions, are subject to the same or substantially similar requirements and have general construction permit forms that were approved by the department following the process described in Subsections B or C of 20.11.41.31 NMAC. A source that is required to obtain a permit pursuant to 20.11.41 NMAC but does not qualify for a general construction permit shall obtain a construction permit as required by 20.11.41.13 NMAC. A general construction permit shall not be issued for a major modification or a major stationary source as defined in either 20.11.60 NMAC, *Permitting in Nonattainment Areas*, or 20.11.61 NMAC, *Prevention of Significant Deterioration*, or for a major source as defined in 20.11.42 NMAC, *Operating Permits*.

**B. Approval of general construction permit form and revised general construction permit form:**

**(1)** The department shall provide notice of a proposed general construction permit form or revised general construction permit form (hereafter, "general construction form") by publication in the newspaper with the largest general circulation in Bernalillo county. The notice shall:

**(a)** provide a description of the groups of sources with similar operations, processes and emissions that are subject to the same or substantially similar requirements and would be able to use the proposed form within Bernalillo county to apply for an air quality permit if the form is approved;

**(b)** state the reason the department proposes approval of the general construction permit form;

**(c)** specify the notification period that the applicant will be required to provide to the public if the proposed form is approved by the department; and stipulate that an applicant shall use the form to apply for a permit; and public notice requirements that shall be met by the source as required by the 'general construction form' shall include at a minimum:

**(i)** provide public notice by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions, as shown in the most current records of the city of Albuquerque

office of neighborhood coordination and the Bernalillo County zoning, building and planning department, within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be located; the applicant may submit a written request to the department proposing an alternative approach to providing public notice if the proposed source or modification is located at a site with large property boundaries or campus-like facilities; the applicant shall obtain prior written approval from the department for any alternative approach to provide public notice; the public notice shall include all the information required by Subsection C of 20.11.41.13 NMAC; and

**(ii)** prior to submitting the application, post and maintain a weather-proof sign provided by the department, posted at the more visible of either the proposed or existing facility entrance or another location on the property that is accessible to the public, if approved in advance and in writing by the department; the applicant shall list on the sign all information required by Subsection C of 20.11.41.13 NMAC; the applicant shall keep the sign posted until the department takes final action on the permit application; if an applicant can establish to the department's satisfaction that the applicant is prohibited by law from posting at either location required by Paragraph (2) of Subsection B of 20.11.41.13 NMAC, the department may waive the posting requirement and may impose different notification requirements;

**(d)** provide a brief summary of the procedure that will be followed if an individual application is submitted on the proposed form;

**(e)** describe the location where the proposed general construction permit form may be obtained;

**(f)** state that the public has 30 days to submit written comments and evidence to the department regarding the proposed general construction permit form; and

**(g)** state that the department shall hold a PIH pursuant to 20.11.41.15 NMAC if the director determines there is significant public interest and a significant air quality issue is involved.

**(2)** The department shall provide the notice required by Paragraph (1) of Subsection B of 20.11.41.31 NMAC by regular mail or electronic mail to all individuals and organizations identified on a list maintained by the department of persons who have stated in writing a desire to receive notices of all applications filed pursuant to 20.11.41 NMAC.

**(3)** Each general construction permit form shall:

**(a)** describe which sources may qualify to apply for the general construction permit; and

**(b)** specify the contents required for a complete application for the general construction permit; in the general construction permit form, the department may provide for an application that deviates from the requirements of 20.11.41.13 NMAC, if the application includes:

**(i)** all information necessary to determine qualification for, and to assure compliance with, the general construction permit; and

**(ii)** applicant's public notice requirements pursuant to Subparagraph (c) of Paragraph (1) of Subsection B of 20.11.41.31 NMAC and a statement that any person may provide written comment to the department within 15 days of receipt of the public notice;

**(c)** contain permit terms and conditions that apply to all sources that are issued the general construction permit, including:

**(i)** sufficient terms and conditions to assure that all sources permitted and operating in accordance with the general construction permit will meet all applicable requirements of the federal act, the state act and board regulations, including 20.11.63 NMAC, *New Source Performance Standards For Stationary Sources*, and 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants For Stationary Sources*, and will not cause or contribute to air contaminant levels in excess of any NAAQS or NMAAQs; and

**(ii)** monitoring, record keeping and reporting requirements appropriate to the source and sufficient to ensure compliance with the general construction permit; at a minimum, the general construction permit shall specify where the records shall be maintained, how long the records shall be retained and that all records or reports shall be made available upon request by the department; and

**(iii)** as determined appropriate by the department, terms and conditions to address and report emissions that occur during upsets, startups and maintenance; and

**(d)** specify that every document, including every application form, report, compliance certification and supporting data, that is submitted pursuant to 20.11.41.31 NMAC shall contain a certification that meets the requirements of Paragraph (13) of Subsection E of 20.11.41.13 NMAC.

**(4)** Before the department makes a final decision regarding a general construction permit form, the department shall hold a PIH if the director determines that there is significant public interest and a significant air quality issue is involved. A PIH is not an adjudicatory hearing on the merits. During the PIH, attendees can ask questions, provide comments and provide information regarding the general

construction permit form, but no final decision shall be made by the department at the close of the hearing. The department shall make all arrangements and pay all expenses of the hearing including:

(a) arranging a location for the PIH;

(b) providing a hearing officer; the hearing officer shall preside over the PIH, shall give all attendees present at the hearing a reasonable opportunity to ask questions, provide comments and provide information regarding the general construction permit form and to examine attendees commenting at the hearing, but shall not make a final recommendation or a final decision regarding the permit application;

(c) publishing public notice of the PIH in the newspaper with the largest general circulation in Bernalillo county no fewer than 10 days before the PIH; the notice shall include the date, time, and location of the PIH, a description of the general construction permit form, and a statement that a final decision has not been made by the department regarding the general construction permit form;

(d) mailing notice of PIH to all interested persons who have submitted written comments or evidence to the department and to all interested persons who have delivered to the department a written request for notice regarding the general construction permit form; a request to inspect or copy shall not be considered a written comment for the purposes of Subparagraph (d) of Paragraph (4) of Subsection B of 20.11.41.31 NMAC;

(e) requiring department staff to attend the PIH and be present during comments and questions by the attendees; and

(f) recording the PIH and including the recording in the administrative record regarding the general construction permit form; the department shall provide a duplicate of the recording to any person who requests a copy; the person requesting shall reimburse the department for the cost of the copy before the department makes the copy; the person making the request for a copy may instead provide the department with recording media that meets the department specifications, and the department will not impose a charge for copying; if a person requests a transcript of the hearing (the requestor), the department shall obtain an estimate of the cost of the transcription and inform the requestor; the requestor shall pay the estimated cost to the department before the department orders the transcription; if the actual cost of the transcription is more than the estimate, the requestor shall pay the additional amount before the department provides the transcription to the requestor; if the actual cost of the transcription is less than the estimate, the department shall reimburse

the difference.

(5) The department may adopt the proposed general construction permit form or a substantially similar form if the requirements of Subsection B of 20.11.41.31 NMAC have been met.

**C. Transition schedule for general construction permit form revision:** When the department revises a general construction permit form, the department shall include a reasonable transition schedule before an existing source must comply.

**D. Non-substantive changes:** The department may make non-substantive changes to a general construction permit form without complying with Subsection B of 20.11.41.31 NMAC. Examples of non-substantive changes include correcting typographical or grammatical errors or adding clarification to instructions. When the department makes a non-substantive change to the form the department may change the date of the form to identify the new version.

[20.11.41.31 NMAC - N, 1/1/14]

#### **20.11.41.32 ACCELERATED REVIEW OF APPLICATION:**

**A. Request for accelerated review of application:** As provided by the state act at NMSA 1978 Section 74-2-7(B)(8) and (9), an applicant may request accelerated review if the applicant complies with the following requirements and all other requirements of 20.11.41.32 NMAC:

(1) 20.11.41.12 NMAC, *Fees for Permit Application Review*;

(2) 20.11.41.13 NMAC, *Application for Permit*;

(3) 20.11.41.15 NMAC, *Public Information Hearing*;

(4) 20.11.41.16 NMAC, *Permit Decisions and Air Board Hearing on the Merits*;

(5) 20.11.41.18 NMAC, *Applicant's Additional Legal Responsibilities*;

(6) 20.11.41.19 NMAC, *Permit Conditions*;

(7) 20.11.41.20 NMAC, *Permit Cancellation, Suspension or Revocation*;

(8) 20.11.41.21 NMAC, *Permittee's Obligation to Inform the Department and Deliver an Annual Emissions Inventory*;

(9) 20.11.41.22 NMAC, *Performance Testing*;

(10) 20.11.41.23 NMAC, *Temporary Relocation of Portable Stationary Sources*;

(11) 20.11.41.24 NMAC, *Emergency Permits*;

(12) 20.11.41.25 NMAC, *Nonattainment Area Requirements*;

(13) 20.11.41.26 NMAC, *Compliance Certification*;

(14) 20.11.41.27 NMAC, *Enforcement*;

(15) 20.11.41.28 NMAC, *Administrative and Technical Permit Revisions*;

(16) 20.11.41.29 NMAC, *Permit Modification*;

(17) 20.11.41.30 NMAC, *Permit Reopening, Revision and Reissuance*;

(18) 20.11.41.31 NMAC, *General Construction Permits*; and

(19) 20.11.41.33 NMAC, *Significant Ambient Concentrations - Nonattainment*.

**B. Public notice provided by the department:** The department shall provide the public notice as required by Paragraphs (2) through (9) of Subsection B of 20.11.41.14 NMAC.

**C. Qualified outside contractors:**

(1) The department shall request proposals from persons interested in providing assistance as a qualified outside contractor in the accelerated review of permit applications pursuant to 20.11.41 NMAC.

(2) The department shall evaluate the proposals submitted by the interested persons. To be eligible to contract with the department as a qualified outside contractor, a person must be:

(a) legally qualified to contract with the department; and

(b) qualified to assist the department in review of permit applications, as determined by the department.

(3) Persons who are selected as qualified outside contractors shall be under contract with the department to provide accelerated review of permit applications pursuant to 20.11.41.32 NMAC.

**D. Requests for accelerated review:**

(1) An applicant for a permit pursuant to 20.11.41 NMAC may request accelerated permit review of the application by a qualified outside contractor. Applications for accelerated review shall be preceded by a pre-application meeting between the applicant and the department. Requests for accelerated review shall not be granted unless there is at least one qualified outside contractor under contract with the department as required by Paragraph (3) of Subsection C of 20.11.41.32 NMAC. If there are no persons under contract to provide accelerated review, the department shall review the application in accordance with 20.11.41.16 NMAC.

(2) A request for accelerated permit review shall be submitted with the permit application and a certified check or money order in the amount of the accelerated review filing fee as required by 20.11.2 NMAC. The department shall notify the applicant of the names and addresses of the qualified outside



contractors. The applicant shall deliver a copy of the application, by mail or hand delivery, to each qualified outside contractor identified by the department, unless the applicant is aware of a conflict of interest.

(3) Applicants who have chosen accelerated review pursuant to 20.11.41.32 NMAC shall pay the accelerated review fee required by 20.11.2 NMAC in addition to all other applicable fees imposed by 20.11.2 NMAC.

(4) Participation in the accelerated permit review process shall not relieve the applicant of any responsibilities imposed by a board regulation.

(5) Qualified outside contractors under contract that are interested in performing accelerated review of a specific application shall submit to the department:

(a) a statement of interest;

(b) a statement of qualifications for the specific application;

(c) an estimate of:

(i) the cost for the review;

(ii) the schedule for the review; and

(d) a notarized affidavit attesting that no conflict of interest exists regarding the specific permit application.

(6) The department shall review the submittals and determine which persons qualify to review a specific application.

(7) If no qualified outside person meets the requirements of Paragraph (5) of Subsection D of 20.11.41.32 NMAC, the department shall impose the accelerated review filing fee and the permit application review fee required by 20.11.2 NMAC and review the application on an accelerated schedule without the assistance of a qualified outside contractor and as required by 20.11.41.16 NMAC.

(8) Before the department determines whether an application for accelerated review is administratively complete, the department shall provide the applicant with a written bid summary of the qualified outside contractor submittals that shows the costs of the accelerated review and the anticipated schedule for reviewing the application, drafting the permit and issuing the permit. The department shall determine whether an application for accelerated review is administratively complete.

**(9) Applicant's responsibilities for response to bid summary:**

(a) Within five working days after the applicant receives the department's bid summary, the applicant shall either:

(i) submit to the department a written recommendation asking the department to accept one of the accelerated review bids, or a prioritized list of more than one of the accelerated review bids, including a brief justification for the recommendation, with a certified check or

money order payable to the department in the amount specified in the bid summary and a notarized affidavit attesting that no conflict of interest exists regarding the applicant's recommended selections; or

(ii) submit to the department a written withdrawal of the request for accelerated review.

(b) The department shall deem the applicant's request for accelerated review withdrawn if the applicant fails to submit a written recommendation or written withdrawal within five working days after the applicant has received the department's bid summary unless the applicant has submitted a written request for an extension and the department has granted an extension in writing.

**(10) Department's selection of qualified outside contractor:**

(a) If the request for accelerated review is withdrawn, the department shall retain the accelerated review filing fee required by 20.11.2 NMAC and shall review the application without the assistance of a qualified outside contractor and pursuant to 20.11.41.16 NMAC.

(b) If the applicant recommends a qualified submittal, the department shall determine whether to accept the recommended submittal. If the department accepts the recommended submittal, the department shall instruct the qualified outside contractor to begin review of the application. If the department rejects the recommended submittal, the department shall inform the applicant and allow the applicant to recommend an alternate submittal pursuant to Paragraph (9) of Subsection D of 20.11.41.32 NMAC or, if there are no other qualified submittals, the department shall retain the accelerated review filing fee required by 20.11.2 NMAC and review the application without the assistance of a qualified outside contractor pursuant to 20.11.41.16 NMAC.

**E. Disclosure of conflict of interest during accelerated review:**

(1) The applicant and the qualified outside contractor have a continuing obligation to investigate potential conflicts of interest and to immediately disclose any conflict of interest to the department in writing. If a conflict of interest is not disclosed as required by Subparagraph (d) of Paragraph (5) of Subsection D of 20.11.41.32 NMAC and is later disclosed or discovered, the department may:

(a) deny the application pursuant to Subsection F of 20.11.41.17 NMAC;

(b) terminate accelerated review and review the application pursuant to 20.11.41.16 NMAC; or

(c) allow accelerated review to continue after elimination of the conflict.

(2) In choosing among the options provided by Subparagraphs (a)-(c) of Paragraph (1) of Subsection E of 20.11.41.32 NMAC, the department shall consider whether the conflict of interest was disclosed or discovered, the timing of the disclosure or discovery, the applicant's diligence in investigating potential conflicts of interest, any indication of intentional or willful failure to disclose, the significance of the conflict of interest, and the applicant's ability to eliminate the conflict of interest in a timely manner.

**F. Issuance of a permit after accelerated review:**

(1) Upon completion of the review, the qualified outside contractor shall provide the department with a draft permit and all documentation pertaining to the permit application, including all communications, notes and drafts. At any time during the review, the qualified outside contractor shall provide the department with all documentation pertaining to a specific application requested by the department in writing. The documentation shall be subject to the Inspection of Public Records Act, Chapter 14, Article 2 NMSA 1978, and the confidential information section of the state act at NMSA 1978, Section 74-2-11.

(2) The department shall review the analysis prepared by the qualified outside contractor and shall issue the permit, issue the permit subject to conditions or deny the requested permit pursuant to 20.11.41.17 NMAC. The department retains final authority to accept or reject the qualified outside contractor's analysis regarding the permit application.

(3) The department shall not issue the permit until the applicant has paid both the

[Continued on page 517.]

accelerated review processing fee and the permit review fee required by 20.11.2 NMAC.  
[20.11.41.32 NMAC - N, 1/1/14]

**20.11.41.33 SIGNIFICANT AMBIENT CONCENTRATIONS - NONATTAINMENT**

Table 1.						
Pollutant	Averaging Time					
	Annual	24-hr	8-hr	3-hr	1-hr	1/2-hr
TSP	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>	--	--	--	--
PM <sub>10</sub>	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>	--	--	--	--
SO <sub>2</sub>	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>	--	25 µg/m <sup>3</sup>	--	--
H <sub>2</sub> S	--	--	--	--	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>
CO	--	--	0.5 mg/m <sup>3</sup>	--	2.0 mg/m <sup>3</sup>	--
NO <sub>2</sub>	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>	--	--	--	--
Non-Methane Hydrocarbons	--	--	--	5.0 µg/m <sup>3</sup>	--	--

[20.11.41.33 NMAC - Rp, 20.11.41.27 NMAC, 1/1/14]

**20.11.41.34 PERMIT STREAMLINING SOURCE CLASS CATEGORIES: [RESERVED]**

[20.11.41.34 NMAC - N, 1/1/14]

**HISTORY OF 20.11.41 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - State records center and archives.

Resolution No. 1, Air Pollution Control Regulations Of The Albuquerque Bernalillo County Air Quality Control Board, 8/6/71;

Regulation No. 1, Air Pollution Control Regulations, 6/6/73;

Regulation No. 1, Air Pollution Control Regulations, 7/19/73;

Regulation No. 1, Air Pollution Control Regulations, 3/21/77;

Regulation No. 20, Permits. 3/24/82;

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, Permits 7/21/87;

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 6/5/91;

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 2/26/93;

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 5/23/94,

Regulation No. 20, Authority-To-Construct Permits; supersedes Regulation No. 20, 12/16/94.

**History of Repealed Material:**

20.11.41 NMAC, Authority To Construct, filed 8/30/02 - Repealed effective 1/1/14.

**Other History:**

Regulation No. 20, Authority-To-Construct Permits, filed 12/16/94 was renumbered and reformatted into first version of the New Mexico Administrative Code as 20 NMAC 11.41, Authority-To-Construct, filed 10/27/95.

20 NMAC 11.41, Authority-To-Construct, filed 10/27/95 was renumbered, reformatted, amended and replaced by 20.11.41 NMAC, Authority To Construct, effective 10/1/02.

20.11.41 NMAC, Authority To Construct, filed 8/30/02 was repealed and replaced by 20.11.41 NMAC, Construction Permits, effective 1/1/14.

**NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE AND ADMINISTRATIVE CENTER**

This is an amendment to 10.14.200 NMAC, Section 9. The purpose of these changes are to effect the amending of Subsection O of 10.14.200.9 NMAC to be effective on July 31, 2013.

**10.14.200.9 HANDLING AND SECURITY OF SAMPLES:**

**A.** DNA records and samples are confidential and shall not be disclosed except as authorized by the DNA

oversight committee and as governed by the DNA Identification Act.

**B.** All files, computer, and sample storage systems maintained by the administrative center pursuant to the DNA Identification Act shall be secured. Access shall be limited to employees of the administrative center as authorized by the head of the administrative center pursuant to and directed by the official functions and duties stated in Paragraph (1) of Subsection B of 29-16-4 NMSA 1978, and as provided by Subparagraph (e) of Paragraph (6) of Subsection B of 29-16-4 and Subsection C of 29-16-8 NMSA 1978 and to technical repair personnel as required to maintain the system as authorized by the head of the administrative center.

**C.** Both state and national

database searches shall be performed via secured computer systems.

**D.** Any person who willfully discloses, seeks to obtain or use information from the DNA identification system for purposes not authorized in these rules and in violation of Section 29-16-12 NMSA 1978 shall be subject to the penalties thereof.

**E.** All samples received by the administrative center for DNA analysis shall be considered potentially bio-hazardous. Universal safety precaution procedures shall be followed when handling biological samples.

**F.** Samples shall be handled, examined, and processed one at a time to avoid possible cross-contamination from another sample or from the examiner.

**G.** All sample collection kits shall be received in a sealed condition. If the kit is not sealed upon receipt the sample shall be rejected and a request for a new sample shall be made by the head of the administrative center.

**H.** If the documentation or certification sections are not filled out, it shall be documented and the head of the administrative center shall be notified. The decision as to whether to accept the sample or request a new sample shall be made by the head of the administrative center.

**I.** The FTA card envelope shall be opened to examine the FTA collection card. The person's name on the card shall be verified with the person's name on the subject information section of the sample collection kit. If the names do not match, the head of the administrative center shall be notified and shall reject the sample unless the identification of the donor can be verified through fingerprint comparison.

**J.** Each sample shall receive a unique identifying NMDIS database number that does not include any personal identification information. The database number shall be placed on the sample collection kit and on the FTA card.

**K.** The FTA card shall be returned to the FTA card envelope and placed into secured storage until processed for analysis.

**L.** Known, collected and non-analyzed, duplicate arrestee or covered offender samples and DNA collection kits may be destroyed at the discretion of the head of the administrative center, provided that:

(1) the kit duplication is confirmed and documented by fingerprint comparison between the original and duplicate kits;

(2) an image of the duplicate collection kit is retained; and

(3) the original, or other previously collected, DNA collection kit and subsequent records for the arrestee or offender are maintained by the administrative center.

**M.** Unopened, unanalyzed arrestee samples that are collected but are found to not qualify to have been collected pursuant to Subsection B of 29-3-10 NMSA 1978, and whereby the person collected is not otherwise required to provide a DNA sample pursuant to another DNA collection related New Mexico statute, shall be destroyed by the administrative center.

**N.** Provided that there has been no qualifying request for expungement pursuant to 29-16-10 NMSA 1978, arrestee samples that are collected, may be retained unopened and unanalyzed as long as may be required to make a final determination of compliance with Subsection B of 29-3-10 NMSA 1978.

**O.** Unopened, unanalyzed arrestee samples that are collected and after

more than one year from the date of collection are found to have no available information with which to make a final determination of compliance with Subsection B of 29-3-10 NMSA 1978, and whereby the person collected is not otherwise required to provide a DNA sample pursuant to another DNA collection related New Mexico statute, shall be destroyed by the administrative center.  
[3/1/1998; 10.14.200.9 NMAC - Rn & A, 10 NMAC 14.200.9, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006; A, 8/15/2012; A 7/31/2013]

## NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

### TITLE 2 PUBLIC FINANCE CHAPTER 20 ACCOUNTING BY GOVERNMENTAL ENTITIES PART 7 GOVERNING THE AUTOMATIC DIRECT DEPOSIT OF STATE EMPLOYEES' SALARY AND WAGES

**2.20.7.1 ISSUING AGENCY:** Department of Finance and Administration.  
[2.20.7.1 NMAC - N, 7/31/2013]

**2.20.7.2 SCOPE:** All state agencies utilizing the central payroll system operated by the financial control division of the department of finance and administration, pursuant to Section 6-5-2.1(I) NMSA 1978.  
[2.20.7.2 NMAC - N, 7/31/2013]

**2.20.7.3 STATUTORY AUTHORITY:** Section 9-6-5(E) and Section 10-7-2(B) NMSA 1978.  
[2.20.7.3 NMAC - N, 7/31/2013]

**2.20.7.4 DURATION:** Permanent.  
[2.20.7.4 NMAC - N, 7/31/2013]

**2.20.7.5 EFFECTIVE DATE:** July 31, 2013.  
[2.20.7.5 NMAC - N, 7/31/2013]

**2.20.7.6 OBJECTIVE:** The objective of this rule is to provide state employees with the convenience of the direct deposit of their salary and wages while minimizing the burden on the state's central payroll system and human resources and protecting the state and state employees from potential fraud.  
[2.20.7.6 NMAC - N, 7/31/2013]

**2.20.7.7 DEFINITIONS:**

**A. "Direct deposit account"** means a checking or savings account with a financial institution designated by a state employee to receive direct deposits of the state employee's net salary and wages.

**B. "Direct deposit"** means an electronic fund transfer whereby a state employee's net salary and wages are credited to an account designated by the employee.

**C. "Division"** means the financial control division of the department of finance and administration.

**D. "Financial institution"** means a financial institution located within the United States that is part of the electronic fund transfer network used by the division to make direct deposits.

**E. "Net salary and wages"** means the remainder due a state employee after all authorized payroll deductions have been taken from a state employee's gross wages. Authorized payroll deductions include state and federal taxes paid by the state employee, state employee contributions toward retirement programs administered by the public employees retirement association and educational retirement board, and state employee premiums for group benefits offered through the risk management division of the general services department.

**F. "Salary and wages"** means remuneration for personal services rendered by a state employee to a state agency, payment for authorized paid leave taken by a state employee, payment for accumulated annual leave and compensatory time upon separation from employment with the state, and payment for sick leave pursuant to Section 10-7-10 NMSA 1978.

**G. "State agency"** means any department, institution, board, bureau, commission, district or committee of the government of the state and means every office or officer of any of the above that utilizes the central payroll system operated by the division, pursuant to Section 6-5-2.1(I) NMSA 1978.

**H. "State employee"** means an employee of a state agency, including a person holding an elected office.  
[2.20.7.7 NMAC - N, 7/31/2013]

### **2.20.7.8 LIMITATIONS ON DIRECT DEPOSIT ACCOUNTS:**

**A.** A state employee may only have one direct deposit account at a time.

**B.** A state employee must own, in whole or in part, the direct deposit account designated by the state employee.

**C.** One hundred percent of the state employee's net salary and wages must be deposited into the direct deposit account designated by the state employee.  
[2.20.7.8 NMAC - N, 7/31/2013]

### **2.20.7.9 DIRECT DEPOSIT ACCOUNT PROCEDURES AND RESPONSIBILITIES:**

**A.** Upon being hired by a state agency and during such other times as may be required by the division, a state



employee must either:

- (1) affirmatively decline to participate in the direct deposit program; or
- (2) designate a direct deposit account.

**B.** State employees shall use forms and agreements prescribed by the division to affirmatively decline to participate in the direct deposit program, designate a direct deposit account, and change their direct deposit account designation.

**C.** State employees shall demonstrate their ownership interest in the direct deposit account designated by them by submitting with their direct deposit account designation form a voided, preprinted check, a current statement from their financial institution, or other acceptable evidence of ownership as determined by the division.

**D.** State employees shall submit direct deposit forms to the designated individual within their state agency employer.

**E.** Pursuant to Subsection C of 2.20.5.8 NMAC, state agency chief financial officers are responsible for ensuring that direct deposit forms are filled out correctly and completely, that the state employee has demonstrated the state employee's ownership interest in the account, and that direct deposit information is properly entered into the central payroll system.

[2.20.7.9 NMAC - N, 7/31/2013]

HISTORY OF 2.20.7 NMAC: [RESERVED]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.262.400 NMAC, Sections 3, 4, 9 and 12, effective August 1, 2013.

**8.262.400.3 STATUTORY AUTHORITY:** ~~[New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2 authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HHFA) waiver under section 1115 waivers of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.]~~ New Mexico Statutes Annotated, 1978 Chapter 27, Articles 1 and 2 authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under two federal Section 1115(a) demonstration waivers, both subject to special terms and conditions.  
[8.262.400.3 NMAC - N, 7-1-05; A, 6-1-10; A, 8-1-13]

**8.262.400.4 DURATION:** The SCI program is operated subject to continuation of the ~~[state's HHFA waiver and the medicaid demonstration—waiver]~~ federal Section 1115(a) demonstration waivers and subject to availability of funds.

[8.262.400.4 NMAC - N, 7-1-05; A, 6-1-10; A, 8-1-13]

### **8.262.400.9 BASIS FOR DEFINING THE GROUP:**

**A.** The request for assistance is the first step to determining which individuals are included in the assistance group.

**B.** Household composition:  
~~[(1) For a child to be considered part of the household, the child must be under the age of 19.~~

~~\_\_\_\_\_ (2) To be considered a household of one, the individual, aged 19 or older, must be unmarried with no dependent children of his/her own.~~

~~\_\_\_\_\_ (3) For other household definitions, refer to 8.202.400 NMAC.]~~

(1) For a child to be considered part of the household, the child must be under the age of 19. The child must be living, or considered to be living, in the home of the relative who is the primary caretaker for the child. The relative specified as the primary caretaker for the child must be within the fifth degree of relationship to the child by blood, marriage or adoption, as determined by New Mexico's Uniform Probate Code.

(2) An unborn child is considered part of the household as though the child was born and living with the mother. If the woman is pregnant with multiple unborn children, each child is considered part of the household.

(3) Married adults under the same household, age 19 to 64, with no dependent children will be considered a household of two.

(4) An individual, age 19 to 64, unmarried with no dependent children will be considered a household of one.

(5) For other household definitions, refer to 8.202.400 NMAC Recipient Policies.  
[8.262.400.9 NMAC - N, 7-1-05; A, 8-1-13]

**8.262.400.12 CONTINUOUS ELIGIBILITY:** An individual determined to be eligible for SCI will remain eligible, in the designated income grouping, for a period of ~~[twelve (12)]~~ 12 continuous months pursuant to continuation of the federal waivers as described in 8.262.400.4 NMAC, regardless of changes in income. The calculated premiums, copayments and cost-sharing maximum amounts will remain in effect for the benefit year following the eligibility determination.

[8.262.400.12 NMAC - N, 7-1-05; A, 8-1-13]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.262.500 NMAC, Sections 4 and 9, effective August 1, 2013.

**8.262.500.4 DURATION:** The SCI program is operated subject to continuation of the ~~[state's HHFA waiver and the medicaid demonstration—waiver;]~~ federal Section 1115(a) demonstration waivers and subject to availability of funds.

[8.262.500.4 NMAC - N, 7-1-05; A, 6-1-10; A, 8-1-13]

**8.262.500.9 ESTABLISHING NEED - GENERAL REQUIREMENTS:** Methodology for establishing financial eligibility for state coverage insurance (SCI) uses New Mexico works cash assistance definitions of income, rules for income availability, and exempt income with the exception of Subsection D 8.102.520.9 NMAC, SSI, which is considered to be unearned income for the SCI program; Subsection C of 8.102.520.11 NMAC and Subsection B of 8.102.520.12 NMAC, which refer to the methodology for determining self-employment income. Additionally, SCI income methodology considers child support and social security survivor benefits for children exempt income not unearned income.

**A. Income test:** In order to be eligible for SCI, countable income (after applicable exemptions and disregards) must meet the SCI household income limit for the appropriate family size. The SCI income standards are based on 200 percent of federal poverty levels (FPLs). SCI uses New Mexico works income definitions and methodologies with the exception of Subsection C of 8.102.520.11 NMAC and Subsection B of 8.102.520.12 NMAC. (Also see 8.102.520.8 NMAC through 8.102.520.15 NMAC). SCI eligibility and cost-sharing levels will be determined based on one income test using countable income (after applicable exemptions and disregards).

**B. Determining income for self-employed individuals:** Reports to state and federal tax authorities are the usual indicators of self-employment income ~~[(refer to Subparagraph (b) of Paragraph (2) of Subsection B of 8.100.130.14 NMAC for other acceptable documents that may be submitted to determine self-employment income)].~~ To determine self-employment income, apply the following methodology:

(1) ~~[use the amount listed on line 31 (net profit or loss) of schedule C or line 36 (net profit or loss) of Schedule F, or the net profit/loss line of other schedules deemed applicable to self-employment income, of the most recent or previous year's 1040~~

income tax return to determine annual self-employment income;] Use the net profit or loss of Schedule C or the net profit or loss of the Schedule F, or the net profit or loss line of other schedules deemed applicable to self-employment income, of the most recent or previous year's 1040 income tax return to determine annual self-employment income.

(2) Divide the amount by 12 or by the applicable number of months in business to determine monthly self-employment income.

(3) If the above tax schedules or the 1040 income tax return is not available to determine self-employment income, the individual may use the documents listed below to determine self-employment income. All business expenses and self-employment costs shall be deducted from the gross earnings submitted with the following documents. The income after all deductions and self-employment costs are applied shall be counted as the gross earned income of the benefit group member.

(4) Documents which are used to verify self-employment income include:

(a) required state and federal tax and employer identification numbers;

(b) required federal and state tax forms for the current and prior tax year, including state and federal income and employer wage reporting and withholding reporting forms, gross receipts and occupation tax reporting forms;

(c) bills which indicate self-employment costs;

(d) other papers showing income and business expenses (profit and loss report);

(e) all required business and occupation licenses;

(f) completed personal wage record;

(g) additional items as listed in ISD 135, "proof checklist"; or

(h) if documentary evidence of non-mandatory documents is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.

**C. Earned income work incentive deduction:** To qualify for the work incentive deduction the benefit group member must have earned income. The deduction is only taken from earned income. The work incentive deduction is allowed with no time limit as follows:

(1) \$125 and one-half of the remainder for the parent in a single-parent benefit group;

(2) \$225 and one-half of the remainder for each parent in a two-parent benefit group;

(3) \$125 and one-half of the remainder for a single adult benefit group with no dependents;

(4) \$125 and one-half of the remainder for each adult in a two adult

benefit group with no dependents; and

(5) \$125 for non-benefit group members whose income is deemed available.

[E:] **D. Payment standard increments:** Payment standard increments for nonsubsidized housing living arrangements and clothing allowance do not affect the SCI eligibility process, i.e., the eligibility limits for income are not increased by the amount of the nonsubsidized housing or clothing allowance payment increments.

[E:] **E. Excess hours work deduction:** This deduction is not applicable to SCI.

[E:] **F. SCI category designation:** SCI eligibles will be assigned one category of eligibility (062). The income grouping (subcategory) will control the employee premium and copayment amounts.

[8.262.500.9 NMAC - N, 7-1-05; A, 3-1-06; A, 6-1-08; A, 7-1-09; A, 8-1-13]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.262.600 NMAC, Sections 3, 4 and 11, effective August 1, 2013.

### 8.262.600.3 STATUTORY AUTHORITY:

[New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The state was granted a health insurance flexibility and accountability (HIFA) waiver under Section 1115 of the Social Security Act and a medicaid demonstration waiver under Section 1115, both subject to certain terms and conditions. The state is using waiver authority to implement the State Coverage Insurance (SCI program).] New Mexico Statutes Annotated, 1978 Chapter 27, Articles 1 and 2 authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under two federal Section 1115(a) demonstration waivers, both subject to special terms and conditions. The SCI program offers a basic benefit package to adults with countable income of less than 200 percent of the federal poverty level. There is no fee-for-service coverage under SCI. The benefits begin after enrollment with one of the contracted managed care organizations.

[8.262.600.3 NMAC - N, 7-1-05; A, 6-1-10; A, 8-1-13]

**8.262.600.4 DURATION:** The SCI program is operated subject to continuation of the [state's HIFA waiver and the medicaid demonstration waiver] two federal Section 1115(a) demonstration waivers, and subject

to availability of funds.

[8.262.600.4 NMAC - N, 7-1-05; A, 6-1-10; A, 8-1-13]

### 8.262.600.11 CONTINUOUS

**ELIGIBILITY:** Eligibility will continue for the 12-month certification period, pursuant to continuation of the federal waivers as described in 8.262.600.4 NMAC, regardless of changes in household income, as long as the individual retains New Mexico residency and continues to be ineligible for other medicaid or medicare coverage and is less than 65 years of age. Twelve-month continuous eligibility shall not be affected by the disposition of any other benefit(s) such as TANF, food stamps, etc. HSD will notify members, whether employees enrolled through an employer group or individuals, 45 days prior to the end of the recertification period. Members are responsible for recertifying eligibility within the 45 day period prior to expiration of the eligibility certification period and notifying the MCO or the employer of their interest in recertification. Failure of the member to follow up with his/her recertification responsibilities within the required timeframe, including the submission of updated income documents, may result in termination from the SCI program.

[8.262.600.11 NMAC - N, 7-1-05; A, 7-1-09; A, 8-1-13]

## NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.4 NMAC, Sections 10 and 17, effective 08-12-2013.

### 16.19.4.10 CONTINUING PHARMACY EDUCATION REQUIREMENTS:

**A.** Continuing pharmacy education (CPE) shall include study in one or more of the general areas of socioeconomic and legal aspects of health care; the properties and actions of drugs and dosage forms; etiology; characteristics and therapeutics of the disease state, or such other subjects as the board may from time to time approve. Continuing pharmacy education approved in New Mexico shall be limited to programs and activities offered by [an ACPE] the accreditation council for pharmacy education (ACPE), approved provider [or], programs or courses approved by other state boards of pharmacy and pharmacy law programs offered by the [N.M.] New Mexico board of pharmacy.

**B.** Continuing pharmacy education, certified as completed by an approved provider will be required of a registered pharmacist who applies for renewal of New Mexico registration as follows: 3.0 CEU (30 contact hours) every



two years. Effective January 1, 2013, pharmacist and pharmacist clinician renewal applications shall document.

(1) A minimum of 1.0 CEU (10 contact hours) excluding the law requirement, per renewal period shall be obtained through "live programs" that are approved as such by the ACPE or the accreditation council for continuing medical education (ACCME). Live programs provided by other providers (such as continuing nursing education) may be acceptable based on review and approval of the board.

(2) A minimum of 0.2 CEU (2 contact hours) per renewal period shall be in the area of patient safety as applicable to the practice of pharmacy.

(3) A minimum of 0.2 CEU (2 contact hours) per renewal period shall be in the subject area of pharmacy law offered by the New Mexico board of pharmacy.

(4) Effective January 1, 2015, a minimum of 0.2 CEU (2 contact hours) per renewal period shall be in the area of safe and appropriate use of opioids. An educational program consisting of a minimum of 0.2 CEU (2 contact hours) that addresses both patient safety as applicable to the practice of pharmacy and the safe and appropriate use of opioids will satisfy requirements of Paragraphs (2) and ~~(3)~~ (4) of Subsection B of this section.

**C.** The number of CEU's to be awarded for successful completion shall be determined by the approved provider in advance of the offering of the activity.

**D.** The board of pharmacy will accept CPE education units for programs or activities completed outside the state; provided, the provider has been approved by the ACPE under its' criteria for quality at the time the program was offered.

**E.** Continuing pharmacy education will be required of all registrants holding an in-state status and out-of-state active status license. (61-11-13D). Pharmacists granted New Mexico initial licensure are exempt from CPE requirements. Inactive status licensees will be required to furnish CPE for the current licensing period, 1.5 CEU for each year the licensee was inactive, only for the purpose of reinstating to active status.

**F.** Not less than 10% of the registrants will be randomly selected each year by the board of pharmacy for audit of certificates by the state drug inspectors. Pharmacists and pharmacist clinicians without sufficient documentation of completion of CPE requirements shall.

(1) Be subject to a fine of not less than \$1000.00.

(2) Be required to complete the deficient CPE in a satisfactory time period as determined by the board.

**G.** In the event a pharmacist makes an application for renewal and does

not furnish necessary proof of compliance upon request, the board will afford the applicant opportunity for hearing pursuant to the Uniform Licensing Act.

**H.** [RESERVED]

**I.** [RESERVED]

**J.** Pharmacy law requirement for.

(1) Active status: A minimum of 0.2 CEU (2 contact hours) of the 3.0 CEU (30 contact hours) required for registration renewal, shall be in the subject area pharmacy law as offered by the N.M. board of pharmacy. In lieu of a board program, pharmacists not residing and not practicing pharmacy in New Mexico, may complete an ACPE accredited course, in the subject area pharmacy law, meeting the CEU requirements of this paragraph.

(2) Effective date. Registration renewals due June 1996 and thereafter.

(3) Licensees may obtain 0.1 CEU (1 contact hour) per year, in the subject area pharmacy law, by attending one full day of a regularly scheduled New Mexico board of pharmacy board meeting or serving on a board approved committee.

(4) Licensees who successfully complete an open book test, administered by the board, shall receive credit for 0.2 CEU (2 contact hours) in the subject area pharmacy law.

**K.** Board of pharmacy law programs.

(1) Pharmacy law programs shall be offered in each of the five pharmacy districts, as defined in NMSA 61-11-4.E, a minimum of once every calendar year (January through December).

(2) Pharmacy law programs shall offer 0.2 CEU and be two contact hours in length.

[02-26-95; 16.19.4.10 NMAC - Rn, 16 NMAC 19.4.10, 03-30-02; A, 12-15-02; A, 01-31-07; A, 08-16-10; A, 03-23-13; A, 08-12-13]

#### **16.19.4.17 PHARMACIST CLINICIAN:**

**A.** Purpose: The purpose of these regulations is to implement the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 through 61-11B-3 NMSA 1978 by providing minimum standards, terms and conditions for the certification, registration, practice, and supervision of pharmacist clinicians. These regulations are adopted pursuant to Section 61-11B-3 of the Pharmacist Prescriptive Authority Act.

**B.** Initial certification and registrants.

(1) The board may certify and register a pharmacist as a pharmacist clinician upon completion of an application for certification and satisfaction of the requirements set forth in these regulations.

(2) A pharmacist who applies for

certification and registration as a pharmacist clinician shall complete application forms as required by the board and shall pay a fee. The fee shall be set by the board to defray the cost of processing the application, which fee is not returnable.

(3) To obtain initial certification and registration as a pharmacist clinician, she/he must submit the following:

(a) proof of completion of sixty (60) hour board approved physical assessment course, followed by a 150 hour, 300 patient contact preceptorship supervised by a physician or other practitioner with prescriptive authority, with hours counted only during direct patient interactions;

(b) the applicant will submit a log of patient encounters as part of the application;

(c) patient encounters must be initiated and completed within 2 years of the application;

(d) a pharmacist clinician requesting a controlled substance registration to prescribe controlled substance in Schedule II or Schedule III shall be trained in responsible opioid prescribing practices. Educational programs shall include an understanding of the pharmacology and risks of controlled substances, a basic awareness of the problems of abuse, addiction, and diversion, and awareness of the state and federal regulations of the prescribing of controlled substances.

(4) The board shall register each pharmacist certified as a pharmacist clinician.

(5) Upon certification and registration by the board, the name and address of the pharmacist clinician, (name of the supervising physician if applicable), and other pertinent information shall be enrolled by the board on a roster of pharmacist clinicians.

**C.** Biennial renewal of registration.

(1) Renewal applications shall be submitted prior to the license expiration.

(2) Applications for renewal must include:

(a) after January 1, 2013, documentation of continuing education hours, including proof of completion of 2.0 CEU twenty (20) contact hours of live CPE or continuing medical education (CME) approved by (ACPE) or AACME (live programs provided by other continuing education providers may be submitted for review and approval to the board), beyond the required hours in 16.19.4.10 NMAC (as amended), as required by the board; and

(b) effective January 1, 2015, a pharmacist clinician with a controlled substance registration to prescribe controlled substances listed in Schedule II or Schedule III shall complete a minimum of 0.2 CEU (2 contact hours) per renewal period in the

subject area of responsible opioid prescribing practices, and;

(c) a current protocol of collaborative practice signed by the supervising physician (if prescriptive authority is sought); and

(d) a copy of the pharmacist clinicians registration with the supervising physicians board (if prescriptive authority is sought); and

(e) other additional information as requested by the board.

**D. Prescriptive authority, guidelines or protocol.**

(1) Only a registered pharmacist clinician with current protocols, registered with the New Mexico medical board or the New Mexico board of osteopathic medical examiners, may exercise prescriptive authority.

(2) A pharmacist clinician seeking to exercise prescriptive authority shall submit an application to the board. The application must include the supervising physicians' name and current medical license, protocol of collaborative practice and other information requested by the board. A pharmacist may submit the application with the initial application for certification or as a separate application after becoming certified and registered as a pharmacist clinician.

(3) The protocol will be established and approved by the supervising physician as set forth in these regulations and will be kept on file at each practice site of the pharmacist clinician and with the board.

(4) The protocol must include:

(a) name of the physician(s) authorized to prescribe dangerous drugs and name of the pharmacist clinician;

(b) statement of the types of prescriptive authority decisions the pharmacist clinician is authorized to make, including, but not limited to:

(i) types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case;

(ii) ordering lab tests and other tests appropriate for monitoring of drug therapy;

(iii) procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(c) activities to be followed by the pharmacist clinician while exercising prescriptive authority, including documentation of feedback to the authorizing physician concerning specific decisions made; documentation may be made on the prescriptive record, patient profile, patient medical chart or in a separate log book;

(d) description of appropriate mechanisms for consulting with the supervising physician, including a quality

assurance program for review of medical services provided by the pharmacist clinician, (this quality assurance program will be available for board review); and

(e) description of the scope of practice of the pharmacist clinician.

(5) Pharmacist clinicians shall not prescribe dangerous drugs including controlled substances for self-treatment or treatment of immediate family members, except under emergency situations. This will not apply to pharmacist administered vaccinations. **Pharmacist clinicians shall not write a recommendation for the use of medical cannabis.**

**E. Scope of practice.**

(1) A pharmacist clinician shall perform only those services that are delineated in the protocol and are within the scope of practice of the supervising physician and/or alternate supervising physician(s).

(2) A pharmacist clinician may practice in a health care institution within the policies of that institution.

(3) A pharmacist clinician may prescribe controlled substances provided that the pharmacist clinician:

(a) has obtained a New Mexico controlled substances registration and a drug enforcement agency registration, and

(b) prescribes controlled substances within the parameters of written guidelines or protocols established under these regulations and Section 3, A. of the Pharmacist Prescriptive Authority Act.

(4) The board may, in its discretion after investigation and evaluation, place limitations on the tasks a pharmacist clinician may perform under the authority and direction of a supervising physician and/or alternate supervising physician(s).

**F. Collaborative professional relationship between pharmacist clinicians and supervising physician(s).**

(1) The direction and supervision of pharmacist clinicians may be rendered by approved supervising physician/designated alternate supervising physician(s).

(2) This direction may be done by written protocol or by oral consultation. It is the responsibility of the supervising physician to assure that the appropriate directions are given and understood.

(3) The pharmacist clinician must have prompt access to consultation with the physician for advice and direction.

(4) Upon any change in supervising physician between registration renewals, a pharmacist clinician shall submit to the board, within ten (10) working days, the new supervising physician's name, current medical license, and protocol; notification to and completion of requirements for the supervising physicians' board shall be completed per that boards requirements. This notice requirement does not apply to an alternate supervising physician who is

designated to cover during the absence of the supervising physician.

**G. Complaints and appeals.**

(1) The chair of the board will appoint two (2) members of the board, and the president of the supervising physician respective board will appoint (2) members of the respective board to the oversight committee; the oversight committee will review complaints concerning the pharmacist clinician practice; the oversight committee will make a report that may include non-binding recommendations to both the board and respective board(s) regarding disciplinary action. Each board can accept or reject the recommendations.

(2) Any applicant for certification or any pharmacist clinician may appeal a decision of the board in accordance with the provisions of the Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.

[03-14-98; 16.19.4.17 NMAC - Rn, 16 NMAC 19.4.17, 03-30-02; 16.19.4.17 NMAC - Rn, 16.19.4.18 NMAC, 12-15-02; A, 09-30-03; A, 01-31-07; A, 05-14-10; A, 08-16-10; A, 10-25-12; A, 03-23-13; A, 06-29-13; A, 08-12-13]

## NEW MEXICO BOARD OF PHARMACY

**This is an amendment to 16.19.5 NMAC, Sections 1 & 8, effective 08-12-2013.**

### 16.19.5.1 ISSUING AGENCY:

Regulation and Licensing Department - Board of Pharmacy, [1650 University Blvd, NE - Ste. 400B, Albuquerque, NM 87102; (505) 841-9102] **Albuquerque, NM**. [02-15-96; 16.19.5.1 NMAC - Rn, 16 NMAC 19.5.1, 03-30-02; A, 08-12-13]

### 16.19.5.8 SUMMARY OF OBJECTIVES:

**A. Internship training,** using academic training as a foundation, is to provide a learning experience in real life situations that will result in a complete professional, who is competent to practice pharmacy, and render professional services on his own, without supervision, at the time of licensure. The objectives shall be:

(1) A practically, accurately and safely trained intern.

(2) An ethically trained intern.

(3) A legally trained intern. Standards of practice and internship program constitute the basic implementation of the approved internship program.

**B. Instructional materials,** affidavits, evaluation forms and reports.

(1) Forms shall be made available by the board.

(a) Application for registration of intern.

(b) Employers affidavit for

internship.

(c) Employers affidavit for externship/clinical.

(d) Annual preceptors evaluation of intern.

(e) Annual intern evaluation of preceptor.

(f) Certification as approved preceptor by the board standards of practice.

(2) Reports and project assignments as may be required to accompany forms under the approved program.

(3) This regulation relating to the internship program shall be furnished to the intern. All other laws and regulations or manuals shall be available at a nominal fee or at reimbursement cost to the board.

**C. Requirements for approved training:** Areas will include retail and hospital pharmacies, radiopharmacies, state and county institutions, federal installations, agencies and clinics, and board approved researchers, drug manufacturers who participate in the approved NPI programs.

(1) General requirements include.

(a) Current license or permit.

(b) No deficiencies relevant to the observance of all federal, state and municipal laws and regulations governing any phase of activity in which the facility is engaged.

(c) Required references: 1. one current professional reference book of choice.

(2) A preceptor will be in direct supervision of all repackaging, labeling and dispensing of drugs for distribution in field offices by state and county health offices.

**D. Requirements for preceptor.** Each preceptor shall.

(1) Be certified as a preceptor by the board or be an approved preceptor for intern training in another state, by that state board of pharmacy.

(2) Have been actively engaged in the practice of pharmacy for one year.

(3) Be engaged in full-time practice of pharmacy.

(4) Not have been convicted of violation of any laws or regulations relating to pharmacy, unless this provision is waived by the board on an individual basis.

(5) Submit all required forms, affidavits, and evaluations to the board on or before the due date.

(6) Be aware and responsible for following regulations governing legal and ethical professional conduct as outlined in the standards of practice and train the intern in this area.

(7) Notify the board of any change of address or employment in writing, within ten (10) days. Change of employment shall serve to suspend certification as preceptor in the former place of employment where the individual was training an intern.

(8) Not be permitted to leave the

intern alone to assume the responsibility of a pharmacist.

**E. Requirements for intern.**

(1) Application shall be made to the board on the required application form provided by the board prior to the beginning of internship. An applicant for registration as a pharmacist intern shall have satisfactorily completed not less than 30 semester hours or the equivalent thereof, in a college of pharmacy curriculum accredited by the ACPE and meet other requirements established by regulations of the board.

(2) The intern shall wear the standard identification tag, approved and issued by the board during any pharmacy area employment. A nominal fee is applicable. The intern will be responsible for imprinting his/her name on the identification tag.

(3) The intern shall make such reports and certifications as required under the approved program.

(4) The intern is responsible for the knowledge and observation of the extent of his legal liability and legal restrictions applicable under the federal, state and municipal laws and regulations.

(5) The intern shall be responsible for ascertaining proper certification for himself, completion of all assignments, submittal of all forms, and reports under the approved program. After all assignments have been completed the preceptor will certify the affidavit and verify the completion of all requirements. Internship will not be evaluated or certified by the board until all forms are turned in to the board office in the form of certified affidavits.

(6) Employment and the internship training period are not to be interpreted as being the same. An intern may work in excess of his computed time. A maximum of 48 hours per week, however, shall be considered computed time for the purpose of completing the internship requirement of 1500 hours.

(7) The intern shall submit, annually, at the time of registration renewal, all completed required forms for the prior year or period of computed time.

(8) Any or all of the training period may be obtained after graduation.

(9) The intern shall notify the board of any change of address, employment or preceptor, in writing, within ten (10) days of such change.

(10) The intern certificate of registration and renewal shall be displayed in the training area where the intern is employed.

(11) The registration shall be renewable under the following conditions:

(a) the intern has received a degree from an ACPE accredited college of pharmacy, but has not completed the required intern hours to take the state board

examination; or the intern has not completed the required number of hours and is enrolled as a pharmacy student;

(b) a candidate who has failed the NAPLEX exam [and/or] **and** the state board jurisprudence examination may renew intern registration to be valid until the next scheduled examination date; provided the renewal does not exceed the period allowed under 16.19.2 NMAC; or

(c) by prior approval or by direction of the board.

(12) The intern registration must be renewed annually on/or before the last day of September. Annual renewal fee is [~~\$10.00~~] **\$25.00**.

**F. Revocation of suspension of certification or certificate:** A certification or certificate may be revoked or suspended upon violation of a statute or regulation; the failure to comply with the approved program or internship; or suspension of an intern from university or college attendance; and after due notice is filed pursuant to the Uniform Licensing Act.

**G. Out-of-state training.**

(1) New Mexico registered interns wishing to earn intern hours out of state must comply with the regulation relating to internship and the approved program, or the equivalent thereof; certification of the preceptor shall be made to the board by the board of pharmacy in the reciprocal state.

(2) Out of state registered interns or students wishing to earn internship hours in New Mexico must comply with the regulations relating to internship and the approved program of this state and shall register with the board.

(3) Computed time, under equivalent approved programs, submitted to the board by out-of-state applicants for licensure, will be evaluated.

[08-27-90; A, 03-02-99; 16.19.5.8 NMAC - Rn, 16 NMAC 19.5.8, 03-30-02; A, 07-15-02; A, 08-12-13]

## NEW MEXICO BOARD OF PHARMACY

**This is an amendment to 16.19.10 NMAC, Sections 1 and 11, effective 08-12-13.**

**16.19.10.1 ISSUING AGENCY:** Regulation and Licensing Department - Board of Pharmacy, [1650 University Blvd, NE - Ste. 400B, Albuquerque, NM 87102; (505) 841-9102] **Albuquerque, NM.**

[02-15-1889..02-15-96; 16.19.10.1 NMAC - Rn, 16 NMAC 19.10.1, 03-30-02; A, 08-12-13]

**16.19.10.11 PUBLIC HEALTH CLINICS:**

**A. CLINIC LICENSURE:**

(1) All clinics where dangerous drugs are administered, distributed or



dispensed shall obtain a limited drug permit as described in Section 61-11-14 B (6) of the Pharmacy Act which consists of the following types:

(a) Class A clinic drug permit for clinics where:

(i) dangerous drugs are administered to patients of the clinic;

(ii) more than 12,500 dispensing units of dangerous drugs are dispensed or distributed annually;

**(iii) clinics dispensing only one class of dangerous drug or controlled substance, such as oral contraceptives or methadone, may be approved by the board as a Class B3 clinic;**

(b) Class B clinic drug permit for clinics where dangerous drugs are:

(i) administered to patients of the clinic; and

(ii) dispensed or distributed to patients of the clinic. Class B drug permits shall be issued by categories based on the number of dispensing units of dangerous drugs to be dispensed or distributed annually, as follows: 1. CATEGORY 1 up to 2,500 dispensing units; 2. CATEGORY 2 from 2,501 - 7,500 dispensing units; 3. CATEGORY 3 from 7,501 - 12,500 dispensing units;

(c) Class C clinic drug permit for clinics where dangerous drugs are administered to patients of the clinic.

**B. FORMULARIES:**

(1) For all clinic types, drug procurement and storage is limited to the drugs listed in the dispensing formulary for the clinic. The formulary shall be developed by the pharmacy and therapeutics committee of the facility, or if no such committee exists, by the pharmacist and medical director of the clinic. The formulary drugs shall be appropriate for the scope of medical services provided at the clinic facility. A dangerous drug with the same generic name is considered one drug within the formulary (ie) all dosage forms and packages of ampicillin are considered one drug.

(2) For all clinic types, drug procurement and storage is limited to the drugs listed in the administration formulary for on-site administration. The formulary shall be developed by the pharmacy and therapeutics committee of the facility, or if no such committee exists, by the pharmacist and medical director of the clinic. The formulary drugs shall be appropriate for the scope of medical services provided at the clinic facility. A dangerous drug with the same generic name is considered one drug within the formulary (ie) all dosage forms and packages of ampicillin are considered one drug.

(3) A clinic may petition the board for an alternative dispensing formulary as set forth in ~~[16.19.10.11.R]~~ **Subsection R of**

**16.19.10.11 NMAC.**

**C. CONSULTANT PHARMACIST:**

(1) Any facility licensed as a clinic by the board which does not employ a staff pharmacist must engage the services of a consultant pharmacist, whose duties and responsibilities are described in ~~[Part 4, Section 11, Sub-Section (2)]~~ **Subsection C of 16.19.4.11 NMAC.**

(2) The consultant pharmacist shall wear an identification badge listing his name and job title while on duty in the clinic.

**D. [SUPPORTIVE] PHARMACY TECHNICIANS AND SUPPORT PERSONNEL:**

(1) ~~[Appropriately—trained]~~ Pharmacy technicians, working in a clinic under the supervision of the pharmacist, may perform activities associated with the preparation and distribution of medications, including prepackaging medications and the filling of a prescription or medication order. These activities may include counting, pouring, labeling and reconstituting medications.

(2) The pharmacist shall ensure that the pharmacy technician has completed the initial training required ~~[by Part 22, Section 9]~~ **in Subsection A of 16.19.22.9 NMAC.**

(3) A written record of the initial training and education will be maintained by the clinic pursuant to requirements of ~~[Part 22, Section 9, Paragraph 9.4]~~ **Subsection C of 16.19.22.9 NMAC.**

(4) The permissible ratio of pharmacy technicians to pharmacists on duty is ~~[4:1]~~ **to be determined by the pharmacist in charge or consultant pharmacist.**

(5) ~~[Non-technician—supportive]~~ **Support** personnel may perform clerical duties associated with clinic pharmacy operations, including computer data entry, typing of labels, processing of orders for stock, **duties associated with maintenance of inventory** and ~~[maintenance—of]~~ dispensing records.

(6) The pharmacist is responsible for the actions of ~~[supportive]~~ personnel; allowing actions outside the limits of the regulations shall constitute unprofessional conduct on the part of the pharmacist.

(7) Name tags including job title, shall be required of all ~~[supportive]~~ personnel while on duty in the clinic.

**E. PROCUREMENT OR RECEIPT OF DANGEROUS DRUGS:**

(1) The system of procurement for all drugs shall be the responsibility of the pharmacist.

(2) Records of receipt of dangerous drugs and inventories of controlled substances shall be maintained as required by the Drug, Device and Cosmetic Act 26-1-16 and the Controlled Substances Act 30-31-16 and ~~[Board of Pharmacy 16]~~ **NMAC**

~~19.20]~~ **board of pharmacy regulation 16.19.20 NMAC.**

**F. REPACKAGING:**

(1) Repackaging from bulk containers to dispensing units for distribution at locations other than the site of repackaging requires FDA registration, whether or not the repackaged drugs enter interstate commerce. (See FDA Regulations Title 21, Sections 207, 210 and 211).

(2) Repackaging of drug from bulk containers into multiple dispensing units for future distribution to clinic patients at the site of repackaging may be done by a physician, dentist, pharmacist, or by a pharmacy technician under the supervision of the pharmacist as defined in ~~[16.19.22.7.B]~~ **Subsection B of 16.19.22.7 NMAC.** All drugs repackaged into multiple dispensing units by a pharmacy technician must undergo a final check by the pharmacist.

(3) A record of drugs repackaged must be maintained, to include the following.

(a) Date of repackaging.

(b) Name and strength of drug.

(c) Lot number or control number.

(d) Name of drug manufacturer.

(e) Expiration date (per USP requirements).

(f) Total number of dosage units (tabs, caps) repackaged (for each drug).

(g) Quantity per each repackaged unit container.

(h) Number of dosage units (tabs, caps) wasted.

(i) Initials of repackager.

(j) Initials of person performing final check.

(4) All dispensing units of repackaged medication must be labeled with the following information.

(a) Name, strength, and quantity of the drug.

(b) Lot number or control number.

(c) Name of manufacturer.

(d) Expiration date.

(e) Date drug was repackaged.

(f) Name ~~or~~ initials of repackager.

(g) Federal caution label, if applicable.

(5) Repackaged units must be stored with the manufacturer's package insert until relabeled for dispensing, as specified under ~~[Section 11, Sub-Section (5) of this regulation]~~ **Subsection G of 16.19.10.11 NMAC.**

**G. CLINIC DISPENSING OR DISTRIBUTING:**

(1) Drugs shall be dispensed or distributed only to clinic patients on the order of a licensed practitioner of the clinic.

(2) The clinic practitioner shall record the prescribed drug therapy on the patient medical record indicating the name, strength, quantity and directions for use of the prescribed drug. This information shall be initialed or signed by the practitioner. A

separate prescription form in addition to the medical record may be used.

(3) The prescription order may then be prepared by the practitioner, pharmacist or technician under the supervision of the pharmacist and a dispensing label affixed to the dispensing unit of each drug. The following information shall appear on the label affixed to the dispensing unit.

(a) Name of patient.  
 (b) Name of prescriber.  
 (c) Date of dispensing.  
 (d) Directions for use.  
 (e) Name, strength, and quantity of the drug.

(f) Expiration date.  
 (g) Name, address and phone number of the clinic.

(h) Prescription number, if applicable.

(4) The pharmacist or practitioner must then provide a final check of the dispensing unit and sign or initial the prescription or dispensing record.

(5) Refill prescription orders must also be entered on the patient's medical record and the dispensing record.

#### H. PATIENT COUNSELING:

(1) Each clinic licensed by the board shall develop and provide to the board policies and procedures addressing patient counseling which are at least equivalent to the requirements of [~~Board Regulation Part 4, Section 17, Paragraph 17.5~~] **Subsection F of 16.19.4.16 NMAC**.

(2) If the consultant pharmacist is absent at the time of dispensing or distribution of a prescription from clinic drug stock to a clinic patient, the patient shall be provided written information when appropriate on side effects, interactions, and precautions concerning the drug or device provided. The clinic shall make the consultant pharmacist's phone number available to patients for consultation on drugs provided by the clinic.

**I. DISPENSING RECORDS:** A record shall be kept of the dangerous drugs dispensed indicating the date the drug was dispensed, name and address of the patient, the name of the prescriber, and the quantity and strength of the drug dispensed. The individual recording the information and the pharmacist or clinic practitioner who is responsible for dispensing the medication shall initial the record.

**J. SAMPLE DRUGS:** Samples of medications which are legend drugs or which have been restricted to the sale on prescription by the New Mexico board of pharmacy are subject to all the record keeping, storage and labeling requirements for prescription drugs as defined by NMSA 26-1-16 and other applicable state and federal laws.

#### K. DRUG STORAGE:

(1) Space for the storage and dispensing of drugs shall have proper ventilation, lighting, temperature controls, refrigeration and adequate security as defined by the board or its' agent. Minimum space requirements for main drug storage areas are as follows:

(a) for Class A clinics - 240 square foot room;

(b) for Class B clinics;  
 (i) categories 1, and 2 - 48 square foot room; and

(ii) category 3 - 96 square foot room;

(c) for Class C clinics - an area adequate for the formulary.

(2) Controlled substances must be stored as defined in [~~Part 20, Section 21, Sub-Section (3), Paragraph A.~~] **16.19.20.48 NMAC**.

(3) All drug containers in the facility shall be clearly and legibly labeled as required under [~~Part 10, Section 11, Sub-Section (4)~~] **Subsection F of 16.19.10.11 NMAC** - (REPACKAGING and Sections 26-1-10 and 26-1-11 of the Drug, Device and Cosmetic Act).

(4) Purchase, storage and control of drugs shall be designed to prevent having outdated, deteriorated, impure or improperly standardized drugs in the facility.

(5) Access to the drug storage area shall be limited to clinic practitioners, the pharmacist, and supportive personnel who are performing pharmacy-related functions.

(6) Clinics licensed by the board prior to adoption of this regulation are exempt from the minimum space requirements set forth in [~~16.19.10.NMAC H.K.(1), (a) through (c) of this regulation~~] **Paragraph (1) of Subsection K of 16.19.10.11 NMAC**. When these facilities change ownership, remodel the drug storage area, or relocate after May 15, 1996, [~~16.19.10.H.K.(1), (a) through (c) of this regulation.~~] **the requirements of Paragraph (1) of Subsection K of 16.19.10.11 NMAC** shall apply.

#### L. DISPOSITION OF UNWANTED OR OUTDATED DRUGS:

(1) The pharmacist shall be responsible for removal of recalled, outdated, unwanted or otherwise unusable drugs from the clinic inventory.

(2) Options for disposal are destruction under the supervision of the pharmacist or return to the legitimate source of supply.

**M. REFERENCE MATERIAL:** Adequate reference materials are to be maintained in the clinic. These shall include a current product information reference such as USPDI, facts and comparisons, or American hospital formulary service; a copy of the state drug laws and regulations and a poison treatment chart with the regional poison control

center's telephone number.

#### N. PROCEDURES MANUAL:

(1) Written policies and procedures shall be developed by the pharmacy and therapeutics committee, or if none, by the pharmacist-in-charge and clinic's executive director, and implemented by the pharmacist-in-charge.

(2) The policy and procedure manual shall include but not be limited to the following:

(a) a current list of the names and addresses of the pharmacist-in-charge, consultant-pharmacist, staff pharmacist(s), supportive personnel designated to provide drugs [~~and/or~~] **and** devices, and the supportive personnel designated to supervise the day-to-day pharmacy related operations of the clinic in the absence of the pharmacist;

(b) functions of the pharmacist-in-charge, consultant pharmacist, staff pharmacist(s) and supportive personnel;

(c) clinic objectives;

(d) formularies;

(e) a copy of the written agreement, if any, between the pharmacist and the clinic;

(f) date of the last review or revision of policy and procedure manual; and

(g) policies and procedures for

(i) security;

(ii) equipment;

(iii) sanitation;

(iv) licensing;

(v) reference materials;

(vi) drug storage;

(vii) packaging and

repackaging;

(viii) dispensing and

distributing;

(ix) supervision;

(x) labeling and

relabeling;

(xi) samples;

(xii) drug destruction

and returns;

(xiii) drug and device

procuring;

(xiv) receiving of drugs

and devices;

(xv) delivery of drugs

and devices;

(xvi) record keeping;

and

(xvii) scope of practice.

(3) The procedures manual shall be reviewed on at least an annual basis. A copy of the manual shall be kept at the clinic at all times.

(4) A written agreement defining specific procedures for the transfer, storage, dispensing and record keeping of clinic dangerous drug stock from a licensed New Mexico pharmacy will be included in the procedures manual. The agreement will be signed by a clinic official and pharmacy

official and reviewed annually.

**O. PATIENT RECORD:** Clinics shall maintain patient records as defined in [~~Part 4, Section 17, Paragraph 17-3~~] **Subsection C of 16.19.4.16 NMAC.**

**P. DRUG TRANSFER TO A PHARMACY:**

(1) Dangerous drug stock unopened containers, except samples, may be transferred physically or electronically to a pharmacy licensed in New Mexico for dispensing to clinic patients.

(a) record of transfer shall be maintained at the clinic and the pharmacy. It will include:

- (i) date of transfer or shipment;
- (ii) name and strength of drug;
- (iii) package size;
- (iv) number of packages;
- (v) manufacturer or repackager; and
- (vi) lot number and expiration date, unless transferred from a clinic supplier to a pharmacy.

(b) A copy of the transfer or shipment record will be provided to the pharmacy at the time of transfer. This record will be compared with the drugs for accuracy and retained by the pharmacy as the receipt document separate from other receiving records of the pharmacy.

(c) Transferred clinic drugs will be stored in the restricted area of the pharmacy and physically separated from all other pharmacy drugs.

(d) Drugs returned to the clinic by the pharmacy will be documented in a transfer record as described in [~~16.19.10.11.P.(1)-(a)~~] **Subparagraph (a) of Paragraph (1) of Subsection P of 16.19.10.11 NMAC.** A copy will be maintained by the pharmacy and the clinic.

(2) A clinic may petition the board for an alternative drug transfer system as set forth in [~~16.19.10.11.Q~~] **Subsection Q of 16.19.10.11 NMAC.**

(3) The formulary of transferred drugs for pharmacy dispensing is restricted to the clinic's scope of practice.

**Q. P H A R M A C Y DISPENSING:** Clinic drug stock may be transferred to, and maintained by, a pharmacy for dispensing to clinic patients as provided in this regulation. Clinic drug stock may be dispensed by the pharmacy if:

(1) the drugs are dispensed only to a clinic patient with a valid prescription from a practitioner of that clinic;

(2) clinic prescriptions for clinic drugs are maintained separately from other prescriptions of the pharmacy;

(3) the prescription is dispensed in a container with a label attached which reads "DISPENSED FOR (clinic name and address) BY (pharmacy name and address)";

(4) all packaging and labeling requirements for prescriptions dispensed by a pharmacy have been met; and

(5) patient records and counseling requirements have been maintained separately for all clinic patients whose prescriptions were filled by the pharmacy from clinic drug stock.

**R. PETITION FOR ALTERNATIVE PLAN:**

(1) A clinic may petition the board for an alternative visitation schedule, dispensing formulary, or drug transfer system (each an "alternative plan") as follows.

(a) Prior to implementation of any alternative plan, the clinic shall provide to the board a written petition that describes the proposed alternative plan and justifies the request. The petition shall include an affidavit that states that the clinic has a current policy and procedures manual on file, has adequate security to prevent diversion of dangerous drugs, and is in compliance with all rules applicable to the clinic. The affidavit shall be signed by the medical director, the consultant pharmacist, and the owner or chief executive officer of the clinic. In addition, a petition for an alternative drug transfer system must include a detailed, written description of the proposed alternative transfer system in the policy and procedures manual describing:

- (i) drug ownership;
- (ii) drug ordering;
- (iii) drug shipping;
- (iv) drug receiving;
- (v) drug accountability system;
- (vi) formulary for transfer; and
- (vii) records of transfer.

(b) The board may approve or deny the petition for an alternative plan, at the board's discretion. The board may consider the following:

- (i) degree of compliance by the clinic on past compliance inspections;
- (ii) size and type of the patient population;
- (iii) number and types of drugs contained in the clinic's formulary;
- (iv) the clinic's objectives; and
- (v) impact on the health and welfare of the clinic's patients.

(2) A copy of the board approved alternative plan shall be maintained at the clinic's license location for review by the board or its agent.

(3) The board may terminate the alternative plan if the board determines that the clinic's status or other circumstances justifying the alternative plan have changed. [05-15-96; 16.19.10.11 NMAC - Rn, 16 NMAC 19.10.11, 03-30-02; A, 08-12-13]

## NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.20 NMAC, Section 53, effective 08-12-2013.

### 16.19.20.53 DISPENSING WITHOUT PRESCRIPTION:

**A.** A controlled substance listed in Schedules II, III, or IV *which is not a prescription drug* as determined by FDA and the Drug and Cosmetic Act, may be dispensed by a pharmacist without a prescription provided:

(1) such dispensing is made by a pharmacist or registered pharmacist intern and not by a non-pharmacist employee;

(2) not more than eight (8) ounces of any controlled substance containing opium, nor more than 48 dosage units is dispensed at retail to the same person in any given 48 hour period;

(3) not more than four (4) ounces of any other controlled substance or more than 24 dosage units may be dispensed at retail to the same person in any given 48 hour period;

(4) the purchaser is at least 18 years of age;

(5) the pharmacist requires every purchaser of such substance, not known to him to furnish suitable identification (including proof of age where appropriate);

(6) a bound record book for dispensing such substances is maintained requiring the signature and address of the purchaser, the name and quantity of the controlled substance purchased, the date of each purchase and the name or initials of the pharmacist who dispensed the substance; the book shall contain a statement on each page where purchaser is required to sign, stating no purpose of such substance has been made within the given 48 hour period at another pharmacy and the purchaser shall be made aware of such statement before signing the record.

**B.** Exempt pseudoephedrine product.

(1) Any pseudoephedrine containing product listed as a Schedule V Controlled Substance in Paragraph (2) of Subsection B of 16.19.20.69 NMAC shall be dispensed, sold or distributed only by a licensed pharmacist, pharmacist intern, or a registered pharmacy technician.

(2) Unless pursuant to a valid prescription, a person purchasing, receiving or otherwise acquiring the compound, mixture or preparation shall:

(a) produce a driver's license or other government-issued photo identification showing the date of birth of the persons;

(b) sign a log after reading the purchaser statement for pseudoephedrine receipt or other program or mechanism



indicating the date and time of the transaction, name of the person, address, driver's license number or government issued identification number, name of the pharmacist, pharmacist intern or pharmacy technician conducting the transaction, the product sold and the total quantity, in grams or milligrams, of pseudoephedrine purchased; this log will [br] be only for exempt pseudoephedrine products and shall be kept separate from all other records; the log is to be produced in a way that a customer's personal information is not available to other purchasers;

(c) be limited to no more than 3.6 grams per day or more than a total of 9 grams of a product, mixture or preparation containing pseudoephedrine within a thirty-day period.

(3) Pseudoephedrine purchaser statement must state in addition to any federal requirements "I have not purchased more than 3.6 grams today or more than a total of 9 grams of pseudoephedrine as a single entity or in a combination with other medications in the last 30 days. Entering false statements or misrepresentations in this logbook may subject me to criminal penalties."

(4) Prices charged for compounds, mixtures, and preparations that contain pseudoephedrine shall be monitored. The board may adopt rules to prevent unwarranted price increases as a result of compliance with this section.

**(5) Pharmacies shall submit the information collected pursuant to Paragraph (2) of Subsection B of 16.19.20.53 NMAC electronically, in a board defined format, to the board or its agents. Pharmacies will submit data every seven (7) days beginning September 15, 2013. Pharmacies may petition the executive director of the board for an alternative method for the submission of the information collected pursuant to this section.**

**(6) AUTHORITY TO CONTRACT: The board is authorized to contract with another agency of this state or with a private vendor, as necessary, for the collection of the information collected pursuant to Paragraph (2) of Subsection B of 16.19.20.53 NMAC. Any contract shall be bound to comply with the provisions regarding confidentiality of prescription or personal information in 16.19.20.53 NMAC of this regulation and shall be subject to the penalties specified in 16.19.20 NMAC and 16.19.27 NMAC.**  
[16.19.20.53 NMAC - Rp 16 NMAC 19.20.22, 07-15-02; A, 06-30-06; A, 08-12-13]

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

**This is an amendment to 14.6.6 NMAC, Section 9, effective 09-01-13.**

### 14.6.6.9 G E N E R A L CONSTRUCTION CLASSIFICATIONS.

#### A. General information.

(1) A GB-98 contractor may bid and contract as the prime contractor of a project that involves work authorized by the GB-98 license classification, regardless of the percentage of work in the mechanical/plumbing and/or electrical trades other classifications not specifically prohibited in Paragraph (2) of Subsection A of 14.6.6.9 NMAC. The work outside the scope of the prime contractor's license classification(s) must be subcontracted to an entity validly licensed in the appropriate classification(s).

(2) A GB-98 contractor may not bid and contract as the prime contractor of an entire project if the major portion of the work to be performed, based on dollar amount, is covered by the scope of any of the following GA or GF classification: GA-1, GA-2, GA-3, GA-5, GF-1, GF-2, GF-3, GF-4, GF-6, GF-8 and GF-9.

#### B. Classifications.

(1) **GA Asphalt, bitumen and concrete construction:** Applies to surfaces used by vehicular traffic, not airborne craft.

(a) **GA-1. Streets, roads and highways, including tunnels, parking lots, alleys, seal coat and surfacing.** Requires two years experience. Clear, align, fill, compress, compact, build up or remove earth and do all work necessary to prepare, within the assigned rights-of-way, the land to accept a street, road, highway, including tunnels, parking lots, alleys or driveways, including curbs, gutters, public sidewalks and land fencing. Place and finish concrete and/or bituminous materials and apply sealcoat.

(b) **GA-2. Maintenance and repair.** Requires two years experience. Fix, maintain, repair, patch, mend, cover, fill or replace materials of like substances to that being repaired on streets, roads, highways, parking lots, driveways and alleys. Apply seal coat to driveways and parking lots. Install rumble strips.

(c) **GA-3. Curbs, gutters and culverts.** Requires two years experience. Form, place and finish concrete curbs, gutters, culverts, public sidewalks and bituminous ridge curbs for the deflection of water.

(d) **GA-4. Striping.** Requires two years' experience. Paint directional stripes on paved roads, streets, highways, alleys and parking lots. Install auto parking bumpers or

stops and highway lane markers/reflectors.

(e) **GA-5. Highway signs and guard rails.** Requires two years experience. Erect and stabilize signs and guard rails along public highways, streets, roads and alleys, which are used for the direction and safety of vehicular traffic. Electrical signs must be installed by a properly licensed electrical contractor.

(f) **GA-98. Asphalt, bitumen and concrete construction.** Requires licensure in classifications GA-1 through GA-5, and covers all work authorized in those classifications.

(2) **Residential and commercial building.**

(a) **GB-2. Residential.** Requires two years experience. Erect, alter, repair or demolish homes, residences and apartment houses accommodating not in excess of four (4) family units, Groups R-1 and R-3, as those groups are defined in 14.7.3 NMAC. May also bid and contract for items included in Group U, as defined in 14.7.3 NMAC, when incidental to these structures. Includes all work described by the GS specialty classifications, provided the work is limited to residential construction as defined under this provision.

(b) **GB-98. General building.** Requires four years experience. Erect, alter, repair or demolish residential and commercial buildings, and certain structures, excluding those structures covered by the EE, [GA, GF or] MM, GA, or GF classifications except as listed below. Includes all work described by the GB-2 and GS specialty classifications, GF-5, and GF-7 classifications. Includes the seal coating portion of the GA-2 and the painting portions of the GA-4 classifications.

(3) **Fixed works.** Authorized to construct, alter or repair fixed works facilities; provided, however, that work in any trade or craft that is authorized by any one, or a combination of, the mechanical, electrical, general building or LP Gas classifications must be performed by an entity validly licensed in the appropriate classification. Except as may be expressly provided in a specific classification description, fixed works classifications may not construct buildings that are primarily for the use and occupancy of the general public, but may bid and contract for such buildings when they are incidental to a fixed works project, pursuant to Subsection B of 14.6.6.8 NMAC, above.

(a) **GF-1. Airports.** Requires two years experience. Construct, alter and repair airports, including marking, excavating, grading, fencing, surfacing and subsurfacing (dirt or bitumen and concrete), compacting and other work on surfaces to be used for aircraft traffic, landing, take-off and taxi.

(b) **GF-2. Bridges.** Requires two years experience. Erect, construct, alter, repair or demolish any bridge, overpass or

underpass, culvert and ramp, generally used for vehicular traffic.

**(c) GF-3. Canals, reservoirs, irrigation systems.** Requires two years experience. Construct, erect, alter, repair, or demolish canals, reservoirs and/or irrigation systems, including pivot irrigation systems. May excavate, ditch, fill, compact and place pre-cast components, waterproof membranes and liners, concrete reinforcement, abutments and buttresses in connection therewith. May install tanks, pumps, pipe lines and substations incidental to the project.

**(d) GF-4. Drainage or flood control systems.** Requires two years experience. Construct, erect, install, repair and alter drainage or flood control systems. May dig, excavate, fill, prepare embankments for such purposes, place pre-cast components, concrete reinforcement and perform all other work incidental to these projects. May install storm sewers, including trenching, boring, shoring, backfilling, compacting, and paving.

**(e) GF-5. Recreation areas.** Requires two years experience. Construct, prepare, clear, repair or alter facilities for use as recreation areas, including but not limited to golf courses, tennis courts, playgrounds, outdoor athletic facilities, miniature golf courses, pitch-and-putt golf courses. May prepare the area by excavation, fill, including foundations, retaining walls, sprinkler systems, rest benches, shade and rain shelters. Also includes public campgrounds and parks, including toilet facilities and lean-tos.

**(f) GF-6. Railroad and tunnel construction.** Requires two years experience. Construct railroad lines, including clearing, filling, shaping, compacting, placing rip-rap, stabilizing, setting roadbeds, ties, tie plates, rails, rail connectors, frogs, switch plates, switches, and all appurtenances necessary for an operational railroad line, including bridges, culverts, tunnels, retaining walls, dikes, fences, gates, tool sheds and landing or parking platforms for equipment. Includes welding operations necessary for rail construction.

**(g) GF-7. Tanks and towers.** Requires two years experience. Fabricate and install tanks for the storage of solids or liquids, above or below ground, and towers such as radio and microwave towers, including all necessary site-work, excavation and the construction of concrete pads and foundations, cutting, welding, placement of structural members, engineered structural support systems for elevated tanks, and engineered or prefabricated towers. Includes the repair, cleaning, and placement of liners in tanks, and incidental fencing and buildings.

**(h) GF-8. Transmission lines, tanks and substations (non-electrical).**

Requires two years experience. Build, construct and place lines for the transmission or conveyance of petroleum and other fluid substances, including the application of protective coatings, trenching, boring, shoring, backfilling, compacting, paving and surfacing necessary and incidental to the completion of the installation of such facilities. Includes incidental buildings, tanks, and substations required for the project.

**(i) GF-9. Utility lines and systems, (sewage, natural gas and underground telephone cables).** Requires two years experience. Construct, install, alter or repair utility lines and utility systems for the transmission of sewage, natural gas and water, including excavating, grading, trenching, boring, shoring, backfilling, compacting, paving and surfacing. Includes tanks necessary to the project. Construct, alter, or repair treatment plants and facilities incidental thereto. Install direct burial telephone or data cable and vaults as directed by the telephone utility. May not perform installation of electrical raceways, splicing, termination, installation of load pots, overhead cabling work, or other activities considered under the scope of the ES-7, EL-1 or EE-98 electrical classifications.

**(j) GF-98. Construct, alter or repair fixed works facilities.** Requires four years experience. Requires licensure in classifications GF-1 through GF-9 and covers all work described in these classifications.

**(4) Specialty classifications.** General construction includes numerous specialties. Therefore, CID has established the GS classification series to enable entities that perform this kind of work to be licensed in their respective areas of expertise. The most common of these specialties are described below.

~~**(a) GS-1 Acoustical and/or insulation, urethane foam.** Requires two years experience. Install any insulating material, including urethane foam and approved waterproof membranes and coatings, in or on buildings, structures and on piping for the purpose of energy conservation, temperature and sound control, and fireproofing. Does not include the installation of urethane roof systems.~~

~~**(b) GS-2 Awnings and canopies.** Requires two years experience. Construct, erect and install awnings and canopies, attached to buildings and structures or free standing, including, but not limited to carports and service station canopies, and including necessary excavation and foundation work. All electrical work shall be performed by a properly licensed electrical contractor.~~

~~**(c) GS-3 Tile, marble and terrazzo.** Requires two years experience. Install tile, marble, granite, cultured stone, and terrazzo, including preparing surfaces~~

~~and placing material, with or without adhesives, mortar, or sealants.]~~

~~**(d) (a) GS-4. Concrete, cement, walkways and driveways.** Requires two years experience. Mix, pour, place, and finish concrete, including all necessary preparatory work including excavation, form work, and placing of reinforcement materials. Includes curb and gutter on private property. May not perform this work in street construction.~~

~~**(e) (b) GS-5 Demolition.** Requires two years experience. Demolish all or any portion of a building and certain structures, including such demolition to portions of buildings and structures as to permit additions and alterations to the remaining portions of the building and structure.~~

~~**(f) (c) GS-6 Door installation.** Requires two years experience. Install doors in buildings and structures, including the necessary installation of material embracing essential and acceptable door framing, and install hardware necessary to connecting, closing and locking of such doors.~~

~~**(g) (d) GS-7. Drywall installation and texture.** Requires two years experience. Install gypsum wallboard, gypsum sheathing, taping, bedding and coating the surfaces of the wallboard and sheathing with gypsum joint systems, tape and drywall mud, or a combination of other materials to create a permanent surface of coating. Includes texturing of walls and ceilings.~~

~~**(h) (e) GS-8. Earthmoving, excavating and ditching.** Requires two years experience. Perform earthwork, using hand or power tools, machines that use air, fluids, or other material under pressure, or heavy equipment, in such a manner that cutting, filling, excavating, grading, trenching, backfilling, boring and any similar excavating activity can be executed. Includes the use of explosives for such purposes and may be subject to certain restrictions.~~

~~**(i) (f) GS-9. Elevators, escalators, conveyors and related machinery (non-electrical).** Requires two years experience. Erect, install or repair elevators, escalators and related machinery, including sheave beams, sheaves, cable and wire rope, guides, cab, counterweights, doors, including sidewalk elevators, automatic and manual controls, signal systems and all other devices, apparatus, machinery and equipment (including fabrication on job site) essential to the safe and efficient installation and operation of electrical, hydraulic and manually operated elevators, escalators and conveyors.~~

~~**(j) GS-10 Fencing.** Requires two years experience. Install fencing including cutting, shaping, fabricating and installing barbed wire, wood or metal fencing, masonry brick or block fence walls, including incidental concrete work and~~



hardware necessary to connecting, closing and locking of gates. May not erect retaining walls.

~~————— (k) GS-11 Fixtures, cabinets and millwork. Requires two years experience. Install cabinets and countertops, fixtures that are permanently attached to floors, walls, and ceilings, and perform finish carpentry work, excluding installation of doors and windows.~~

~~————— (l) GS-12 Floor covering, seamless floors and wood floors and finish. Requires two years experience. Install flooring including the work necessary to bring surfaces to a condition where acceptable finished floors can be installed with the use of composition materials and fabrics and such other materials as are by custom and usage accepted in the building and construction industry as floor covering, excluding tile. Install, finish and repair wood floors and flooring, including the scraping, sanding, filling, staining, shellacking and waxing of such wood floors and flooring. This authorization does not include the installation of carpeting.]~~

~~[(m)] (g) GS-13. Framing. Requires two years experience. Cut, join and install wood, and wood and metal products for the framing of a structure or building, including bearing and non-bearing walls, rafters, headers, trusses, joists, studs, door and window rough frames, and roof decks, including repair to any of the above.~~

~~[(n)] (h) GS-14 Glazing, windows, weather stripping, storm door and window installation. Requires two years experience. Fabricate and install windows in buildings and structures, including the necessary installation of material embracing essential and acceptable window framing, and the installation of hardware necessary to connecting, closing and locking of such windows. Cut, assemble and install all makes and kinds of glass work, and execute the glazing of frames, panels, sash and doors. Fabricate and install storm doors and windows. Install weather stripping and caulking.~~

~~[(o)] (i) GS-15 Caissons, piers and pile driving. Requires two years experience. Install piers, caissons and pilings through the use of pile driving equipment and machinery, including necessary excavation, grading and clearing for site preparation for pile driving activities. Cut, weld, join and fabricate caissons or piles. Install all necessary concrete and reinforcing steel within the caissons to create a structural member.~~

~~[(p)] (j) GS-16. Masonry. Requires two years experience. Install or erect brick and other baked clay products, rough cut and dressed stone, artificial stone and pre-cast blocks, structural glass brick or block adobe, laid at random or in courses, with or without mortar, to form masonry~~

walls, including retaining walls, and flatwork including brick and flagstone installed on concrete or sand. Does not include the application of the tile to existing surfaces or the execution, fabrication and erecting of poured cement and concrete, except as a foundation for a wall or surface for flagstone installation.

~~[(q)] GS-17 Ornamental iron and welding. Requires two years experience. Install sheet, rolled and cast, brass, bronze, copper, cast iron, wrought iron, stainless steel or any other metal for the architectural treatment and ornamental decoration of buildings and structures, including all necessary welding. Does not include the work of a GS-29 miscellaneous sheet metal contractor as provided in these classifications. Welding performed at a welding or fabricating establishment, and not installed by employees of the welding establishment, is considered manufacturing and does not require a contractor's license.~~

~~————— (r) GS-18 Painting and decorating. Requires two years experience. Apply wallpaper, paints, pigments, oils, turpentine, japans, driers, thinners, varnishes, shellacs, stains, fillers, waxes and any other vehicles that may be mixed, used and applied to the surfaces of buildings, tanks, structures, monuments and appurtenances thereto. Includes the preparation of surfaces to bring them to a condition such that acceptable work can be executed thereon. Includes the painting portions of the GA-4, stripping classification.]~~

~~[(s)] (k) GS-21. Roofing. Requires two years experience. Install, alter or repair roof systems on existing roof decks to create a weatherproof and waterproof protective membrane, with or without insulation, using asphalt, pitch, tar, sealants, felt, shakes, shingles, roof tile, slate, urethane roofing system or any other approved roofing materials, including the preparatory work necessary to bring such surfaces to a condition where roofing can be installed, sealed or repaired. Includes cutting, shaping, fabricating, and installing of sheet metal such as cornices, flashing, gutters, leaders, rainwater downspouts, pans, prefabricated chimneys, at or near roof lines, metal flues, or doing any part of any combination thereof, which relate to and are incidental to the principal contracting business of installing roofing.~~

~~[(t)] GS-22 Sandblasting. Requires two years experience. Clean or remove paint or other coatings from buildings or structures, by hand or mechanical devices using sand, air, water and other forms of mixed abrasives:]~~

~~[(u)] (l) GS-23 Sign construction (non-electrical). Requires two years experience. Fabricate, install and erect signs of wood, steel, plastic or any material, or any combination of materials, which are~~

to be embedded in the earth, in concrete or other base material, or attached to buildings or structures using anchors, attached cables, bars or similar devices and appurtenances. Electrified signs may be installed by contractors holding ES-1 without being classified hereunder.

~~[(v)] (m) GS-24. Structural steel erection. Requires two years experience. Fabricate and erect structural steel shapes and plates, of any profile, perimeter or cross-section that may be used as structural members for buildings and structures, including riveting and welding.~~

~~[(w)] (n) GS-25. Swimming pools (non-mechanical/electrical). Requires two years experience. Construct and repair swimming pools including excavation, installation of reinforcing steel or mesh, application of concrete and special coatings. May not perform any trade or craft which is authorized by any mechanical, electrical or LP Gas classification.~~

~~[(x) GS-26 Vaults and depositories. Requires two years experience. Install safes, vaults and depositories of any size, shape or form, fabricated with wood, steel, concrete or any other material including the preparation of those areas and specific sections of buildings and structures to house such safes, vaults, depositories. Includes constructing, erecting, or installing buildings or vaults to be used for interring deceased persons.~~

~~————— (y) GS-28 Gunite. Requires two years experience. Install gunite in areas which include, but are not limited to, swimming pools, canals, reservoirs, bank stabilization and open ditch irrigation systems including the application of steel or wire mesh reinforcement.]~~

~~[(z)] (o) GS-30. Plastering, stucco and lathing. Requires two years experience. Prepare wall and ceiling surfaces, interior or exterior, with wood, metal lath, wallboard or other properly prepared surfaces which will accept and hold a mixture of sand, plaster (including gypsum plaster), lime and water, or sand and cement with water or any combination of materials to create a permanent surface coating. These coatings may be applied manually or mechanically on surfaces which will support such coating. May install steel stud systems (non-structural), channel iron work and affix lath or any other materials or products, prepared or manufactured to provide a base for such coatings.~~

~~[(aa) GS-31 Siding. Requires two years experience. Apply siding consisting of slate, gypsum, wood, plastics or other products, including the application of furred up networks on which the siding can be installed. May not install or paint doors or windows.~~

~~————— (bb) GS-32 Miscellaneous sheet metal. Requires two years experience.~~

Fabricate and install sheet metal (galvanized iron) such as cornices, flashing, gutters, leaders, rainwater downspouts, pans, prefabricated chimneys, hoods, skylights and metal flues. May not install HVAC duct systems, vents, grease hoods, or other appurtenances that are authorized by any mechanical classification.

~~(cc)~~ **(p)** **GS-34 Concrete coring, drilling and slab sawing.** Requires two years experience. Coring, boring, drilling, cutting, and sawing concrete, including the removal or demolition of the material. Does not include the installation of wiring or plumbing in such bored, drilled, cut or sawed concrete.

**(5) GS- [29 specialties] A.** The GS- [29] A classification is a sub-category of the specialty classification. It is a miscellaneous classification that is used to identify ~~[uncommon]~~ and consolidate specialties on a case-by-case basis. Requires two years experience.

[14.6.6.9 NMAC - Rp, 14.6.6.8, 14.6.6.10 & 14.6.6.11 NMAC, 2-1-06; A, 9-1-13]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
CONSTRUCTION INDUSTRIES  
DIVISION**

**This is an amendment to 14.7.3 NMAC, Section 17, effective 09-01-13.**

**14.7.3.17 CHAPTER 9 ROOF ASSEMBLIES:**

**A. Section R901 through Section R902:** See these sections of the IRC.

**B. Section R903:** See this section of the IRC except as provided below.

**(1) Section [R903.2 Plaster to roof separation.** A reglet and, weep screed or an approved metal flashing shall be applied where all stucco wall surfaces terminate at a roof.] **R903.2.1 Locations.** Reglet or an approved flashing shall be installed at wall and roof intersections, wherever there is a change in roof slope or direction and around roof openings.

**(2) Section R903.3 Plastered parapets.** Delete the text of this section and replace with the following: Plastered parapets shall require a seamless but permeable waterproof cover or weather barrier, capping the entire parapet and wrapping over each side. The cover shall extend past any break from the vertical a minimum of four (4) inches on the wall side. On the roof side, the cover shall properly lap any rising roof felts or membranes and be properly sealed. A layer of furred expanded metal lath shall be installed over the cover before plaster or stucco is applied. The lath shall extend past any break from the vertical

on the wall side a minimum of five (5) inches and on the roof side, the same distance as the cover below, allowing for plaster stops or seals. No penetrating fasteners are allowed on the horizontal surface of parapets.

**C. Section R904:** See this section of the IRC except add the following new section: Section R904.5 Loose granular fill. Pumice and other granular fill type materials are not permitted in roof assemblies.

**D. Section R905:** See this section of the IRC except add the following new sections.

**(1) Section R905.9.4 Roof deck transitions.** Add new section to the IRC as follows: Where roof sheathing is overlapped to create drainage "crickets" or valleys to canales, taperboard or equivalent shall be used to transition between the two deck levels to create a uniform substrate.

**(2) Section R905.9.5 Canales and scuppers.** All canales and/or scuppers must have a metal pan lining extending 6 inches minimum past the inside of the parapet and 6 inches minimum to each side of the canale or scupper opening. All canales or scuppers must have positive drainage.

**(3) Section R905.11.4 Modified bitumen roofing.** Add new section to the IRC as follows: Where roof sheathing is overlapped to create drainage "cricket" or valleys to canales, taperboard or equivalent shall be used to transition between the two deck levels to create a uniform substrate.

**(4) Section R905.12.4 Thermoset single-ply roofing.** Add new section to the IRC as follows: Where roof sheathing is overlapped to create drainage "crickets" or valleys to canales, taperboard or equivalent shall be used to transition between the two deck levels to create a uniform substrate.

**(5) Section R905.13.4 Thermoplastic single-ply roofing.** Add new section to the IRC as follows: Where roof sheathing is overlapped to create drainage "crickets" or valleys to canales, taperboard or equivalent shall be used to transition between the two deck levels to create a uniform substrate.

**E. Section R907.3 Re-covering versus replacement.** Delete the text of section R907.3 and substitute with the following: New roof covering shall not be installed without first removing existing roof coverings where any of the following conditions occur.

**(1)** Where the existing roof or roof covering is water soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing.

**(2)** Where the existing roof covering is wood shake, slate, clay, cement or asbestos-cement tile.

**(3)** Where the existing roof has two or more applications of any type of roof

covering.

**(4)** Where pumice or other granular fill are present. Existing roofing and granular fill must be removed prior to re-roofing.

[14.7.3.17 NMAC - Rp, 14.7.3.17 NMAC, 1-28-11; A, 04-01-13; A, 09-01-13]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
CONSTRUCTION INDUSTRIES  
DIVISION**

**This is an amendment to 14.7.4 NMAC, Sections 7, 12, 13, and 16, effective 09-01-13.**

**14.7.4.7 DEFINITIONS:**

**A. Amended soil** means improving an unqualified soil to a qualified state with the addition of other soils or amendments.

**B. Amendments** means additive elements to soil, such as lime, portland cement, fly ash, etc. which are "dry-mixed" into the main soil body as a percentage of total weight to achieve stabilization.

**C. Buttress** means a projecting structure providing lateral support to a wall. The buttress shall be incorporated into the foundation and wall system. (Refer to figure 1 of the earthen building figures supplement).

**D. CEB** means compressed earth block.

**E. Count Rumford fireplace** means a fireplace with a typically square opening with coved sides and a shallow firebox depth of at least twelve (12) inches, but no shallower than one third (1/3) of the width of the firebox. The fireback is vertical and does not slant forward. The throat is located at least twelve (12) inches above the lintel and is a nozzle, rounded or streamlined so as to preserve laminar flow of the dilution air through the throat and with a cross-sectional area large enough to insure the elimination of all products of combustion.

**[E:] F. Keyway** means a groove on the vertical rammed earth wall surface for interlocking purposes. Refer to figure 3 of the earthen building figures supplement).

**[F:] G. Lift** means a course of rammed earth, placed within the forms, and then compacted.

**[G:] H. Nailer** means any material rammed into the wall that serves as an attachment device. Refer to figure 4 of the earthen building figures supplement).

**[H:] I. Optimum moisture** means sufficient water (generally no more than ten (10) percent) mixed into the soil to attain sufficient compaction.

~~[F:]~~ **J.** **psi** means pounds per square inch.

~~[F:]~~ **K.** **Qualified soil** means any soil, or mixture of soils, that attains 300 psi compression strength and attains 50 psi modulus of rupture.

~~[K:]~~ **L.** **Rammed earth** means qualified soil that is mechanically or manually consolidated to full compaction.

~~[F:]~~ **M.** **Round-cap nails** means fasteners that include nails or screws in combination with caps of at least three-fourths (3/4) inches diameter or three-fourths (3/4) inch square.

~~[M:]~~ **N.** **Stabilization, stabilized** means qualified soils that pass the wet strength test under ASTM D1633-00 or contain a minimum of six (6) percent portland cement by weight. Stabilization is achieved through the use of amendments.

~~[N:]~~ **O.** **Wet strength compression test** means an approved testing laboratory process in which a fully cured rammed earth cylinder is completely submerged in water a minimum of four hours according to ASTM D1633-00, then subjected to a compression test. [14.7.4.7 NMAC - Rp, 14.7.4.7 NMAC, 1-28-11; A, 9-1-13]

#### 14.7.4.12 **RAMMED EARTH CONSTRUCTION:**

**A. General.** The following provisions shall apply.

(1) Rammed earth shall not be used in any building more than (2) stories in height. The height of every wall of rammed earth without lateral support is specified in 14.7.4.8 NMAC table 1. The height of the wall is defined as the distance from the top of the slab or top of stem wall to the underside of the bond beam.

(2) Exterior rammed earth walls shall be a minimum of eighteen (18) inches in thickness. Exception: Exterior walls that are also designed as solar mass walls (trombe) as defined by the passive solar heating worksheet, dated June 2004 and prepared by the state of New Mexico energy, minerals and natural resources department, are allowed and shall be minimum thickness of ten (10) inches, not to exceed twelve (12) inches. They shall be fully attached to or integrated with any adjacent structural wall and topped with a bond beam that fully attaches them to the bond beam of any adjacent structural wall as described in 14.7.4.17 NMAC.

(3) Interior rammed earth walls shall be a minimum of twelve (12) inches in thickness.

(4) The first lift of rammed earth walls shall be of stabilized rammed earth or minimum 2500 psi concrete, rising not less than three and one half (3 1/2) inches above finish floor level. Unstabilized rammed earth walls must be covered to prevent

infiltration of moisture from the top of the wall at the end of each workday and prior to wet weather conditions, whether the walls are contained within forms or not.

(5) Fully stabilized rammed earth walls may be left unprotected from the elements.

(6) In no case shall a rammed earth wall be reduced in thickness with back to back channels or nailers. Channels or nailers rammed on both sides of a running wall shall not be opposite each other to avoid an hourglass configuration in the wall section. Channels or nailers on both sides of a running wall shall be separated from each other vertically at a distance no less than the rammed earth wall thickness. (Refer to figure 4 of the earthen building figures supplement).

(7) An architect or engineer registered in the state of New Mexico shall design and seal structural portions of two-story residential rammed earth construction documents.

(8) The general construction of the building shall comply with all provisions of the 2009 New Mexico Residential Building Code (NMRBC), unless otherwise provided for in this rule.

(9) Passive solar structures incorporating the use of solar mass walls (trombe), direct gain arrays or sunspaces (greenhouses) as defined by the passive solar heating worksheet, dated June 2004 and prepared by the state of New Mexico energy, minerals and natural resources department, are allowed.

**B. Fireplaces.** Adobe or masonry fireplaces and chimneys in rammed earth structures shall comply with 14.7.3.18 NMAC. They shall be integrated into adjacent rammed earth walls during construction or secured to them by suitable steel ladder reinforcement or reinforcing rods.

**C. Count Rumford fireplaces.** Count Rumford fireplaces are allowed as provided in 14.7.3.18 NMAC.

**D. Stop work.** The building inspector shall have the authority to issue a "stop work" order if the provisions of this section are not complied with.

**E. Lateral support.** Lateral support shall occur at intervals not to exceed twenty-four (24) feet. Rammed earth walls eighteen (18) inches to less than twenty-four (24) inches thick shall be laterally supported with any one or combination of the following: A rammed earth wall of bond beam height that intersects the running wall with at least sixty (60) degrees of support (refer to a figure 5 of the earthen building figures supplement); an adobe wall of bond beam height and at least ten (10) inches in width that intersects with and attaches to the running wall with at least sixty (60) degrees of support (refer to figure 5 of the earthen

building figures supplement); a minimum twenty 20 gauge steel frame or wood frame wall of full height that intersects with and attaches to the running wall with ninety (90) degrees of support, that is properly cross-braced or sheathed (refer to figure 6 of the earthen building figures supplement); a buttress configuration that intersects the running wall at ninety (90) degrees, of adobe or rammed earth. The buttress base must project a minimum of three (3) feet (or thirty-three (33) percent of the wall height) from the running wall and support at least seventy-five (75) percent of the total wall height (refer to figure 7 of the earthen building figures supplement). The thickness of a rammed earth buttress shall be at least eighteen (18) inches. The thickness of an adobe buttress shall be a minimum fourteen (14) inches. Rammed earth walls greater than twenty-four (24) inches in thickness are self-buttressing and do not require lateral support provided their design adheres to 14.7.4.8 NMAC table 1 and the other applicable provisions of this rule.

**F. Openings.** Door and window openings shall be designed such that the opening shall not be any closer to an outside corner of the structure as follows.

(1) In rammed earth walls eighteen (18) inches to less than twenty-four (24) inches thick, openings shall not be located within three (3) feet of any corner of the structure. (Refer to figure 8 of the earthen building figures supplement). Exception: Openings may be located within three (3) feet of any corner provided a buttress extending at least three (3) feet from the structure supports the corner. A continuous footing below and a continuous bond beam above, shall be provided across such openings.

(2) Rammed earth walls greater than twenty-four (24) inches thick are self-buttressing, with no special consideration for placement of openings within the area of the wall.

**G. Piers.** Rammed earth piers supporting openings shall measure no less than three (3) square feet in area and no dimension shall be less than eighteen (18) inches. (Refer to figures 9-A and 9-B of the earthen building figures supplement). [14.7.4.12 NMAC - Rp, 14.7.4.12 NMAC, 1-28-11; A, 9-1-13]

#### 14.7.4.13 **FOUNDATIONS:**

**A. General.** Foundation construction shall comply with applicable provisions of the 2009 New Mexico Residential Building Code, and the following: a minimum of three (3) continuous #4 reinforcing rods are required in [~~minimum 2500 psi~~] concrete footings supporting rammed earth walls. Footings shall be a minimum of ten 10 inches in thickness. Concrete footings and concrete stem walls supporting rammed earth walls



shall be a minimum of 2500 psi. Stem walls shall be the full width of the wall supported above or wider to receive forming systems. ~~[Footings shall be a minimum of ten (10) inches in depth.]~~ Stem walls shall rise above exterior grade a minimum of six (6) inches.

**B. Perimeter insulation.**

For the purposes of placement of perimeter insulation, rammed earth walls may overhang the bearing surface up to the thickness of the perimeter insulation, but in no case greater than two (2) inches.

**C. Keyway.** A key way shall be provided where the rammed earth wall meets the foundation system. The keyway shall be established at the top of the stem a minimum of two (2) inches deep by six (6) inches wide formed at the time of the pour, and shall run continuously around the structure to include any intersecting rammed earth wall sections. The rammed earth wall shall be fully rammed into this keyway (refer to figure 2 of the earthen building figures supplement). Exception: Placement of vertical reinforcing rods extending a minimum twelve (12) inches into the rammed earth wall. The vertical rods shall be minimum #4, imbedded into the concrete and spaced forty-eighty (48) inches on center, maximum.

**D. Concrete grade beam.**

Rubble filled foundation trench designs with a reinforced concrete grade beam above are allowed to support rammed earth wall construction. An architect or engineer registered in the state of New Mexico shall certify the grade beam/rubble-filled trench design portion.

[14.7.4.13 NMAC - Rp, 14.7.4.13 NMAC, 1-28-11; A, 9-1-13]

**14.7.4.16 ATTACHMENTS AND CONNECTIONS:**

**A. General.**

Attachment and connection methods of alternate wall construction to rammed earth walls are described as follows. The building official may approve other attachment and connection methods. In no case shall two wall types be butted to each other without consideration for attachment or connection.

**B. Attachment of a rammed earth wall to a rammed earth wall.**

A keyway, at least six (6) inches wide by three (3) inches deep shall be formed vertically at the center of the wall section from stem top to underside of bond beam. The connecting wall shall be rammed into the keyway. (Refer to figure 3 of the earthen building figures supplement).

**C. Attachment of a load-bearing adobe wall to a rammed earth wall.**

Where adobe is deployed as an interior wall that will be incorporated into the rammed earth wall for lateral support, the adobe shall measure a minimum of ten (10) inches in thickness. Steel ladder

reinforcement shall be rammed into the wall at the intersection with the adobe wall. The reinforcement may be bent against the forms during the ramming process. After ramming is complete and forms removed, the reinforcement shall be incorporated into the adjoining adobe coursing, every four (4) courses minimum. (Refer to figure 12 of the earthen building figures supplement). As an alternative, a keyway, not to exceed the depth of the adobe wall, nor one-third (1/3) the depth of the rammed earth wall, shall be formed into the rammed earth wall. The adobe shall be incorporated into the keyway. (Refer to figure 13 of the earthen building figures supplement).

**D. Attachment of a loadbearing wood or steel frame wall to a rammed earth wall.**

A half-inch (1/2) minimum diameter anchor bolt with four (4) inch hook, set in a linear vertical pattern, a maximum of twenty-four (24) inches on-center. The anchor bolt shall be embedded at least twelve (12) inches into the earth wall with the threaded end protruding sufficiently to pass through and attach the adjoining vertical wall stud. The washer and nut shall be tightened just prior to sheathing the frame wall. As an alternative, eighteen (18) gauge by two (2) inch minimum galvanized strap tie, grouted into the concrete bond beam (or secured to the wood bond beam or wood top plate), securely nailed to the top plate of the frame wall. The remainder of the vertical stud shall be attached to the rammed earth wall with thirty-D (30D) nails or screws embedded a minimum of three (3) inches into the adjacent wall at eight (8) inches on center vertically. (Refer to figure 14 of the earthen building figures supplement).

**E. Attachment of a door or window unit to a rammed earth wall.**

The unit shall be attached to nailers within the opening or nailed or screwed directly into the rammed earth wall. The nail or screw shall penetrate at least three (3) inches into the rammed earth wall. Heavier units may utilize stronger attachments, such as anchor bolts, T-bolts, steel pins, etc., embedded into the rammed earth wall.

**F. Attachment of foam or rigid insulation to a rammed earth wall.**

Insulating boards or foams not exceeding two (2) inches in thickness may be adhered to the exterior of the rammed earth wall. When [rigid] insulation board is used, round-cap nails, capped concrete nails or capped screws shall attach it to the rammed earth wall. Cap nails or screws shall have a maximum spacing of sixteen (16) inches from each other. Additionally, cap nails or screws shall secure the [rigid] insulation boards around their perimeter edges with nails or screws spaced no less than twelve (12) inches apart. All cap nails or screws shall penetrate a minimum of two (2) inches into the rammed earth wall. [~~when securing~~

~~rigid insulation board up to two (2) inches in thickness, and three (3) inches when securing insulation board greater than two (2) inches in thickness.]~~ All insulation fasteners shall be corrosion resistant. Insulating boards or foams shall not be used to form architectural shapes exceeding two (2) inches in thickness.

**G. Attachment of cabinetry to a rammed earth wall.**

Deck screws shall penetrate a minimum of three (3) inches through cabinetry and into a nailer, eight (8) inches on center maximum, or; deck screws with a least three (3) inch minimum penetration through cabinetry and into the rammed earth wall. Screws shall be placed horizontally, eight (8) inches on center maximum, on the top and bottom of cabinetry. As an alternative, all-thread rods or other attachment devices, suitable for attachment of cabinetry through the rammed earth wall.

**H. Attachment of concrete bond beam to a rammed earth wall.**

Number four (4) reinforcing bar shall be driven into the uncured wall top. The reinforcing bar shall be set at a maximum twenty degree angle along both edges of the wall, staggered no more than twenty-four (24) inches on-center and no closer than four (4) inches from the exterior faces of the wall. The reinforcing bar shall extend a minimum of twelve (12) inches into the rammed earth wall and four (4) inches into the concrete bond beam. (Refer to figure 16 of the earthen building figures supplement).

**I. Attachment of wood bond beam to a rammed earth wall.**

One-half (1/2) inch anchor bolts with four (4) inch base hooks shall be rammed into the wall. The bolts shall be staggered a maximum of forty-eight (48) inches on-center along both edges of the wall, staggered no closer than six (6) inches from the exterior faces of the wall. The bolt shall extend a minimum of eighteen (18) inches into the rammed earth wall.

[14.7.4.16 NMAC - Rp, 14.7.4.16 NMAC, 1-28-11; A, 9-1-13]

**NEW MEXICO SECRETARY OF STATE**

This is an amendment to 12.6.2 NMAC, Sections 7, 14, 17, 22, 28, 129, 130, 131, 132, 138, 204, 205, 206, 210 and 300, effective July 31, 2013.

**12.6.2.7 DEFINITIONS:** The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule which are defined in the UCC shall have the respective meanings accorded such terms in the UCC.

A. "Amendment" means a UCC document that [~~purports to amend~~



amends the information contained in a financing statement. Amendments include assignments, continuations and terminations.

B. "Assignment" is an amendment that [~~purports to reflect an assignment of~~] assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

C. "Continuation" means an amendment that [~~purports to continue~~] continues the effectiveness of a financing statement.

D. "[~~Correction~~] Information statement" means a UCC document that [~~purports to indicate~~] indicates that a financing statement is inaccurate or wrongfully filed.

E. "File number" means the unique identifying information assigned to a financing statement by the filing officer for the purpose of identifying the financing statement and UCC documents relating to the financing statement in the filing officer's information management system. For a financing statement with an initial financing statement filed prior to July 1, 2001, the file number consists of a 2 digit year, 2 digit month, 2 digit day, and a 3 digit sequential number (yymmddXXX). For a financing statement with an initial financing statement filed after June 30, 2001 but before March 26, 2003, the file number consists of a 4 digit year, 2 digit month, 2 digit day, 3 digit sequential number, and 2 digit check number (yyyymmddXXXcc). For a financing statement with an initial financing statement filed on or after March 26, 2003, the number includes three segments; the year of filing expressed as a four digit number, followed by a unique seven digit number assigned to financing statement by the filing office and ending with a one digit verification alphabetic character assigned by the filing office but mathematically derived from the numbers in the first two segments. The same file format will be used for amendments as initial filing statements, including the verification alphabetic character. Though the verification alphabetic character is not as important here, it guarantees the integrity of the file number. The filing number bears no relation to the time of filing and is not an indicator of priority.

F. "Filing office" and "filing officer" mean the secretary of state's office, operations division.

G. "Filing officer statement" means a statement entered into the filing office's information system to correct an error by the filing office.

H. "Financing statement" means a record or records composed of an initial financing statement and any filed record(s) relating to the initial financing statement.

I. "Individual debtor name" means [~~a human being, or a decedent~~

~~in the case of a debtor that is such decedent's estate] any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.~~

J. "Initial financing statement" means a UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by Sections 55-9-512, 55-9-513, 55-9-514 or 55-9-518 NMSA 1978.

K. "Organization" means a legal person who is not an individual as defined in item H of this section.

L. "Remitter" means a person who tenders a UCC document to the filing office for filing, whether the person is a filer or an agent of a filer responsible for tendering the document for filing. "Remitter" does not include a person responsible merely for the delivery of the document to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

M. "Secured party of record" means, with respect to a financing statement, a person whose name is provided as the name of a secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under Chapter 55, Article 9 Section 514(a) NMSA 1978, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement. If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Section 55-9-514(b) NMSA 1978, the assignee named in the amendment is a secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

N. "Termination" means an amendment intended to indicate that the related financing statement has ceased to be effective with respect to the secured party authorizing the termination.

O. "UCC" means the Uniform Commercial Code as adopted in this state and in effect from time to time.

P. "UCC document" means an initial financing statement, an amendment, an assignment, a continuation, a termination or a [~~correction~~] information statement. The word "document" in the term "UCC document" shall not be deemed to refer exclusively to paper or paper-based writings; it being understood that UCC

documents may be expressed or transmitted electronically or through media other than such writings. (Note: this definition is used for the purpose of these rules only. The use of the term "UCC document" in these rules has no relation to the definition of the term "document" in Section 55-9-102(a)(30) NMSA 1978.)

[12.6.2.7 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011; A, 7/31/2013]

#### 12.6.2.14 APPROVED FORMS.

National standard forms for UCC documents as approved by the international association of corporation administrators (IACA) are designated as the standard forms for filing a written financing statement and amendment. These standard forms are provided in Section 55-9-521 NMSA 1978 and are available to the public at the filing office's web site at www.sos.state.nm.us. [~~The bar code located on the top of the standard forms is not required for filing.~~]

[12.6.2.14 NMAC - N, 7/1/2001; A, 7/31/2013]

12.6.2.17 FILING FEES. The fees to file UCC documents as set forth in Chapter 55, Article 9, Section 525 NMSA 1978 are as follows.

A. For UCC documents communicated in writing on a form prescribed by the filing office, the fee for filing and indexing a UCC document of one, two or three pages is \$20.00. For a UCC document of at least 4 pages but no more than 25 pages, the fee is \$40.00. If the total number of pages exceeds 25 pages, the fee is \$100.00 plus \$5.00 for each page which exceeds 25 pages. For filings transmitted electronically, the fee is \$10.00 if the record consists of fifteen thousand or fewer bytes. If the record exceeds fifteen thousand bytes, the fee is \$20.00.

B. For UCC documents communicated in writing but not on a form prescribed by the filing office, the fee is double those identified in Subsection A of this section for a record of the same length.

C. Additional fees. In addition to the fees set forth in Subsections A and B of this section, a fee of \$100.00 shall be paid for an initial financing statement that indicates that it is filed in connection with a manufactured-home transaction, and a fee of \$100.00 shall be paid for an initial financing statement that indicates that a debtor is a transmitting utility.

D. [~~A correction~~] An information statement is treated as [~~an amendment~~] information to an initial financing statement and is subject to the fees set forth in Subsections A, B and C of this section.

E. Copies. In addition to the fees identified in this section which are established by statute, the fee for copies of

UCC records ordered from and provided by the filing office is \$1.00 per page.

[12.6.2.17 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011; A, 7/31/2013]

**12.6.2.22 FEES FOR PUBLIC RECORDS SERVICES.** Fees for public records services are established as follows.

A. Paper copies of individual documents.

(1) Regular delivery method - \$1.00 per page.

(2) Fax delivery - \$1.00 per page.

~~[B. Bulk copies of records - \$50.00 per roll of microfilm.~~

~~C.] B.~~ Data from information management system.

(1) Full extract - \$.10 per record on floppy disc or \$100.00 for one month of TIF images on CD-rom.

(2) Update extracts - \$.10 per record on floppy disc or \$100.00 for one month of TIF images on CD-rom.

[12.6.2.22 NMAC - N, 7/1/2001; A, 7/31/2013]

**12.6.2.28 GROUNDS FOR REFUSAL OF UCC DOCUMENT.**

The following grounds are the sole grounds for the filing officer's refusal to accept a UCC document for filing. As used herein, the term "legible" is not limited to refer only to written expressions on paper: it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.

A. Debtor name and address. An initial financing statement or an amendment that purports to add a debtor shall be refused if the document fails to include a legible debtor name and address for a debtor, in the case of an initial financing statement, or for the debtor purporting to be added in the case of such an amendment. If the document contains more than one debtor name or address and some names or addresses are missing or illegible, the filing officer shall index the legible name and address pairings, and provide a notice to the remitter containing the file number of the document, identification of the debtor name(s) that was (were) indexed, and a statement that debtors with illegible or missing names or addresses were not indexed.

B. Additional debtor identification. An initial financing statement or an amendment adding one or more debtors shall be refused if the document fails to identify whether each named debtor (or each added debtor in the case of such an amendment) is an individual or an organization, if the last name of each individual debtor is not identified, or if, for each debtor identified as an organization [~~the document does not include in legible form the organization's type, state of organization~~

~~and organization number (if it has one) or a statement that it does not have one. Debtors identified as individuals are not required to include a social security number. Social security numbers are provided voluntarily and will be redacted on copies of UCC records].~~

C. Secured party name and address. An initial financing statement, an amendment purporting to add a secured party of record, or an assignment, shall be refused if the document fails to include a legible secured party (or assignee in the case of an assignment) name and address. If the document contains more than one secured party (or assignee) name or address and some names or addresses are missing or illegible, the filing officer shall refuse the UCC document.

D. Lack of identification of initial financing statement. A UCC document other than an initial financing statement shall be refused if the document does not provide a file number of a financing statement in the UCC information management system that has not lapsed.

E. Identifying information. A UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by Chapter 55, Article 9, Sections 512, 513, 514 or 518 NMSA 1978, is an initial financing statement.

F. Timeliness of continuation. A continuation shall be refused if it is not received during the six month period concluding on the day upon which the related financing statement would lapse. In the event that the day upon which the related financing statement would lapse falls on a day on which the filing office is not open, the last day is then the first business day immediately preceding the day that the office is closed. A postmark stamped on an envelope by the U.S. postal service does not cause timely filing of the continuation if the continuation is received by the filing office after the last day upon which the related financing statement would lapse.

(1) First day permitted. The first day on which a continuation may be filed is the date of the month corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date during the sixth month preceding the month in which the financing statement would lapse, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse, although filing by certain means may not be possible on such date if the filing office is not open on such date.

(2) Last day permitted. The last day on which a continuation may be filed is

the date upon which the financing statement lapses.

G. Fee. A document shall be refused if the document is accompanied by less than the full filing fee tendered by a method described in 12.6.2.19 NMAC. In the event that more than one filing is submitted with one payment for all filings and one or more filings are refused pursuant to this rule, the filing office will file the accepted filings and receipt the payment received (if the payment is not less than the full filing fee for the total of the accepted filings) for the filings which were acceptable without a refund or credit for the payment due for the unaccepted filing(s) unless the filer demonstrates that the rejected filings should not have been refused under this rule. Otherwise, the filer must correct and resubmit the rejected filing(s) with a new payment.

H. Means of communication. UCC documents communicated to the filing office by a means of communication not authorized by the filing officer for the communication of UCC documents shall be refused.

I. Non-UCC filings not accepted. Filings (such as those pursuant to the Farm Products Secured Interest Act or federal tax liens) which are not included in Chapter 55, Article 9 NMSA 1978 (Chapter 139, Laws of 2001) but submitted on forms prescribed in 12.6.2.14 NMAC will be refused and returned without processing.

J. Transmitting utility debtors. For records that contain a debtor identified as a transmitting utility, the filing officer may require proof of the debtor's authority to operate as a transmitting utility. [12.6.2.28 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011; A, 7/31/2013]

**12.6.2.129 NAMES OF DEBTORS WHO ARE INDIVIDUALS.**

~~[For the purpose of this rule "individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate. This rule applies to the name of a debtor or a secured party on a UCC document who is an individual.] For the purpose of these rules, an "individual debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.~~

A. Individual name [fields: ~~The names of individuals are stored in files that include only the names of individuals, and not the names of organizations. Separate data entry fields are established for first (given), middle (given), and last names (surnames or family names) of individuals. A filer should place the name of a debtor with a single name (e.g., "Cher") in the last~~

name field. The filing officer assumes no responsibility for the accurate designation of the components of a name but will accurately enter the data in accordance with the filer's designations]. Individual debtor names are stored in files that include only the individual debtor names, and not organization debtor names. Separate data entry fields are established for surnames (last or family names), first personal names (given), and additional name(s) or initial(s) of individuals. The name of a debtor with a single name (e.g., "Cher") is treated as a surname and shall be entered in the individual's surname field. The filing officer assumes no responsibility for the accurate designation of the components of a name but will accurately enter the data in accordance with the filer's designations.

B. Titles and prefixes before names. Titles and prefixes, such as "doctor," "reverend," "Mr.," and "Ms.," should not be entered in the UCC information management system. However, as provided in Subsection B of 12.6.2.205 NMAC, when a UCC document is submitted with designated name fields, the data will be entered in the UCC information management system exactly as it appears.

C. Titles and suffixes after names. Titles or indications of status such as "M.D." and "esquire" are not part of an individual's name and should not be provided by filers in UCC documents. Suffixes that indicate which individual is being named, such as "senior," "junior," "I," "II," and "III," are appropriate. In either case, as provided in 12.6.2.205 NMAC, they will be entered into the information management system exactly as received.

D. Extended debtor name field. If any portion of the individual debtor name is too long for the corresponding field, the filer is instructed to check the box that indicates the name was too long and enter the name in Item 10 of the addendum Form UCC1AD. A filing officer shall not refuse to accept a financing statement that lacks the debtor's identifying information, provided the record includes this information in an addendum form.

[D-] E. Truncation - individual names. For records filed after June 30, 2001 but before March 26, 2003, personal name fields in the UCC database are fixed in length. Although filers provided full names on their UCC documents, a name that exceeded the fixed length was entered as presented to the filing officer, up to the maximum length of the data entry field. The length of data entry name fields are as follows.

- (1) first name: 40 characters.
- (2) middle name: 30 characters.
- (3) last name: 80 characters.
- (4) suffix: 10 characters.

[E-] E. For UCC records filed on or after March 26, 2003, name fields in

the UCC data base are not fixed in length.

[12.6.2.129 NMAC - N, 7/1/2001; A, 7/1/2003; A, 7/31/2013]

**12.6.2.130 N A M E S OF DEBTORS THAT ARE ORGANIZATIONS.** This rule applies to the name of an organization who is a debtor or a secured party on a UCC document.

A. Single field. The names of organizations are stored in files that include only the names of organizations and not the names of individuals. A single field is used to store an organization name.

B. Truncation - organization names. The organization [name] debtor field in the UCC database is fixed in length. The maximum length is 160 characters. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field.

[12.6.2.130 NMAC - N, 7/1/2001; A, 7/31/2013]

**12.6.2.131 [ESTATES.—** Although they are not human beings, estates are treated as if the decedent were the debtor under 12.6.2.128 NMAC.] **COLLATERAL BEING ADMINISTERED BY A DECEDENT'S PERSONAL REPRESENTATIVE.** The debtor name to be provided on a financing statement when the collateral is being administered by a decedent's personal representative is the name of the relevant decedent. In order for the information management system to function in accordance with the usual expectations of filers and searchers, the filer should provide the debtor name as an individual debtor name. However, the filing office will enter data submitted by a filer in the fields designated by the filer exactly as it appears in such fields.

[12.6.2.131 NMAC - N, 7/1/2001; A, 7/31/2013]

**12.6.2.132 [TRUSTS.—** If the trust is named in its organic document(s), its full legal name, as set forth in such document(s), is used. Such trusts are treated as organizations. If the trust is not so named, the name of the settlor is used. If a settlor is indicated to be an organization, the name is treated as an organization name. If the settlor is an individual, the name is treated as an individual name. A UCC document that uses a settlor's name should include other information provided by the filer to distinguish the debtor trust from other trusts having the same settlor and all financing statements filed against trusts or trustees acting with respect to property held in trust should indicate the nature of the debtor. If this is done in, or as part of, the name of

the debtor, it will be entered as if it were a part of the name under 12.6.2.205 NMAC and 12.6.2.206 NMAC.] **COLLATERAL HELD IN A TRUST.** The debtor name to be provided when the collateral is held in a trust that is not a registered organization is the name of the trust as set forth in its organic record(s), if the trust has such a name or, if the trust is not so named, the name of the trust's settlor. In order for the information management system to function in accordance with the usual expectations of filers and searchers, the name of a trust or of a settlor that is an organization should be provided as an organization debtor name, in each case without regard to the nature or character of the debtor. Notwithstanding the foregoing, the filing office will enter data submitted by a filer in the fields designated by the filer exactly as it appears in such fields.

[12.6.2.132 NMAC - N, 7/1/2001; A, 7/31/2013]

**12.6.2.138 [CORRECTION-] INFORMATION STATEMENT.**

A. Status of parties. The filing of [a correction] an information statement shall have no effect upon the status of any party to the financing statement.

B. Status of financing statement. [A correction] An information statement shall have no effect upon the status of the financing statement.

C. Filing information not affected. [A correction] An information statement is only made a part of the record for informational purposes and cannot be used to amend or otherwise change filing information.

[12.6.2.138 NMAC - N, 7/1/2001; A, 7/31/2013]

**12.6.2.204 ERRORS OTHER THAN FILING OFFICE ERRORS.**

An error by a filer is the responsibility of such filer. It can be corrected by filing an amendment or it can be disclosed by [a correction] an information statement.

[12.6.2.204 NMAC - N, 7/1/2001; A, 7/31/2013]

**12.6.2.205 DATA ENTRY OF NAMES - DESIGNATED FIELDS.**

A filing should designate whether a name is a name of an individual or an organization and, if an individual, also designates the [first, middle and last names and any] individual's surname, first personal name, additional name(s) or initial(s) and suffix. When this is done, the following rules shall apply.

A. Organization names. Organization names are entered into the UCC information management system exactly as set forth in the UCC document, even if it appears that multiple names are set forth in the document or if it appears that



the name of an individual has been included in the field designated for an organization name.

B. Individual names. On a form that designates separate fields for [first, middle, and last names and any] individual's surname, first personal name, additional name(s) or initial(s) and suffix, the filing officer enters the names into the [first, middle, and last name] individual's surname, first personal name, additional name(s) or initial(s) and suffix fields in the UCC information management system exactly as set forth on the form.

C. Designated fields encouraged. The filing office encourages the use of forms that designate separate fields for individual and organization names and separate fields for [first, middle, and last names and any] individual's surname, first personal name, additional name(s) or initial(s) and suffix. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, filers should be aware that the inclusion of names in an incorrect field or failures to transmit names accurately to the filing office may cause filings to be ineffective. All documents submitted through direct data entry or through EDI will be required to use designated name fields.

[12.6.2.205 NMAC - N, 7/1/2001; A, 7/31/2013]

**12.6.2.206 DATA ENTRY OF NAMES NO DESIGNATED FIELDS.** A UCC document that is an initial financing statement or an amendment that adds a debtor to a financing statement and that fails to specify whether the debtor is an individual or an organization will be refused by the filing office. However, if it is accepted for filing in error, the following rules shall apply.

A. Identification of organizations. When not set forth in a field designated for individual names, a name is treated as an organization name if it contains words or abbreviations that indicate status such as the following and similar words or abbreviations in foreign languages: association, church, college, company, co., corp., corporation, inc., limited, ltd., club, foundation, fund, L.L.C., limited liability company, institute, society, union, syndicate, GmBH, S.A. de C.V., limited partnership, L.P., limited liability partnership, L.L.P., trust, business trust, co-op, cooperative and other designations established by statutes to indicate a statutory organization. In cases where organization or individual status is not designated by the filer and is not clear, the filing office will use its own judgment.

B. Identification of individuals. A name is entered as the name of an individual and not the name of an organization when the name is followed by a title substantially similar to one of the

following titles, or the equivalent of one of the following titles in a foreign language: proprietor, sole proprietor, proprietorship, sole proprietorship, partner, general partner, president, vice president, secretary, treasurer, M.D., O.D., D.D.S., attorney at law, Esq., accountant, CPA. In such cases, the title is not entered.

C. Individual and organization names on a single line. Where it is apparent that the name of an individual and the name of an entity are stated on a single line and not in a designated individual name field, the name of the individual and the name of the entity shall be entered as two separate debtors, one as an individual and one as an entity.

D. Individual names. The failure to designate the [last name] individual's surname of an individual debtor in an initial financing statement or an amendment adding such debtor to a financing statement will cause a filing to be refused. If the filing is accepted in error, or if only the [last name] individual's surname is designated, the following data entry rules apply.

(1) Freestanding initials. An initial in the first position of the name is treated as a first personal name. An initial in the second position of the name is treated as [a middle name] additional name(s) or initial(s).

(2) Combined initials and names. An initial and a name to which the initial apparently corresponds is entered into one name field only [e.g. "D. (David)" in the name "John D. (David) Rockefeller" is entered as "John" [first name] (first personal name); "D. (David)" [middle name] (additional name(s) or initial(s)); "Rockefeller" [last name] (individual's surname)].

(3) Multiple individual names on a single line. Two individual names contained in a single line are entered as two, different debtors on separate debtor lines [e.g. the debtor name "John and Mary Smith" is entered as two debtors: "John Smith", and "Mary Smith"]. Otherwise, more than one debtor in a single line will cause the filing to be refused pursuant to Subsection A of 12.6.2.28 NMAC [e.g. the debtor names "John Smith dba Smith Auto Sales"].

(4) One word names. A one word name is entered as a [last name] individual's surname [e.g. "Cher" is treated as a [last name] individual's surname].

(5) Nicknames. A nickname is entered in the name field together with the name preceding the nickname, or if none, then as the first personal name (e.g., "William (Bill) Jones").

[12.6.2.206 NMAC - N, 7/1/2001; A, 7/31/2013]

**12.6.2.210 [CORRECTION] INFORMATION STATEMENT.** A record

is created for the [correction] information statement that bears the file number for the [correction] information statement and the date and time of filing. The record of the [correction] information statement is associated with the record of the related initial financing statement in a manner that causes the [correction] information statement to be retrievable each time a record of the financing statement is retrieved.

[12.6.2.210 NMAC - N, 7/1/2001; A, 7/31/2013]

**12.6.2.300 RULES APPLIED TO SEARCH REQUESTS.**

Search results are created by applying standardized search logic to the name entered into the search program. Human judgment does not play a role in determining the results of the search. The following, and only the following rules are applied to searches conducted by the filing office search engine.

A. There is no limit to the number of matches that may be returned in response to the search criteria.

B. No distinction is made between upper and lower case letters.

C. Punctuation marks and accents are disregarded.

D. Words and abbreviations at the end of a name that indicate the existence or nature of an organization as set forth in the "Ending Noise Words" list as promulgated and adopted by the international association of corporation administrators as from time to time, are disregarded (e.g., company, limited, incorporated, corporation, limited partnership, limited liability company or abbreviations of the foregoing).

E. The word "the" at the beginning of the search criteria is disregarded.

F. All spaces are disregarded. For first personal name and [middle names] additional name(s) or initial(s) of individuals, initials are treated as the logical equivalent of all names that begin with such initials, and no middle name or initial is equated with all middle names and initials. For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" or "J." as the first personal name, "Smith" as the [last name] individual's surname, and with the initial "A" or any name beginning with "A" in the [middle name] additional name(s) or initial(s) field. If the search request were for "John Smith" (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with "John" or "J." as the first personal name, "Smith" as the [last name] surname and with any name or initial or no name or initial in the middle name field.

G. After taking the



preceding rules into account to modify the name of the debtor requested to be searched and to modify the names of debtors contained in active financing statements in the UCC information management system, the search will reveal only names of debtors that are contained in active financing statements (unless inactive records are requested) and, as modified, exactly match the name requested, as modified.

[12.6.2.300 NMAC - N, 7/1/2001; A, 7/31/2013]

## NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

This is an amendment to 11.3.300 NMAC, Sections 308, 314 and 324 effective 07-31-2013.

### 11.3.300.308 CLAIM DETERMINATION:

A. NOTICE TO EMPLOYER OF FILING OF CLAIM: Whenever a claimant files an initial claim for benefits or an additional claim, the department shall immediately transmit to the claimant's last known employer, at the address of the employer as registered with the department, if so registered, and, if not registered, to the address provided by the claimant, a dated notice of the filing of the claim and a fact-finding questionnaire. The employer shall provide the department with full and complete information in response to the inquiry. The employer shall transmit a response directly to the department within ten (10) calendar days from the date of the transmittal of the notice of claim. Unless excused by the department, the response must be an electronic transmittal.

B. REQUEST FOR ADDITIONAL INFORMATION: Prior to issuance of a determination the department may request additional information from the employer, the claimant or witnesses by telephone, fax, electronic mail or other written report relative to the separation of the claimant from employment. Information obtained by telephone shall be fully documented by the department's representative, and may be used as evidence in any determination or decision regarding the claim.

C. INITIAL DETERMINATION: A determination on any claim for unemployment benefits shall be transmitted only after a department representative has evaluated the claim.

(1) When a non-monetary issue is not raised in an application for unemployment compensation benefits and the employer's response is not received by the department within ten (10) calendar days after the transmission of the notice of claim,

a determination shall be made based upon the information on the application. Payment of benefits may be commenced without further notice.

(2) The ten-day (10) period shall begin to run on the day after the notice of claim was transmitted to the employer as indicated on the application. If the tenth calendar day shall fall on the weekend or on a holiday, the reply shall be timely if received by the department on the following business day.

(3) After the ten-day (10) period has passed, the department shall immediately transmit to the parties the determination and the reason for it, and shall advise the parties of the right to appeal that determination pursuant to these rules.

(4) If the claimant is subsequently disqualified from the receipt of benefits, the employer will remain liable for any benefit charges incurred to the date of disqualification unless, upon appeal, the employer established good cause for the employer's failure to transmit a substantive response to the notice of claim within the ten-day period, provided that, in no event shall an employer be liable for more than ten weeks' worth of benefits charges pursuant to 11.3.300.308 NMAC as a penalty for its failure to respond to the claim in a timely manner.

(5) Notwithstanding any other provisions in 11.3.300.308 NMAC, an employer which displays a pattern of failure to respond adequately or timely to requests from the department relating to claims for unemployment insurance benefits shall not be relieved of benefit charges pursuant to Paragraph (4) of Subsection C of 11.3.300.308 NMAC.

D. REDETERMINATION: A redetermination may be issued only if all the following criteria are met:

(1) The department perceives the need for reconsideration [~~either as a result of a protest by an interested party~~] due to new or additional information received. Examples of the type of errors which may prompt a redetermination are misapplication or misinterpretation of the law, mathematical miscalculation; an additional fact not available to the department at the time of the determination excluding those facts the employer and claimant had the opportunity to provide prior to the initial determination, a mailing of a notice to the wrong employer or address, an employer's timely response statement disputing a claim for benefits or coding error.

(2) All evidence and records are re-examined.

(3) A written redetermination notice is issued to the claimant and any other interested party, and is documented in the department records.

(4) A redetermination can be

issued no later than the twentieth calendar day from the original determination date or twenty days from the date of the first payment derived from the original determination, whichever event occurs latest.

(5) The department may issue a redetermination provided that the employer's statement was received within the statutory time limits and within less than twenty calendar days from the date of the first payment.

(6) If the claimant began collecting benefits and as a result of redetermination will be denied benefits, the claimant shall be advised.

(7) If there is any conflict between the provisions of this rule and the provisions of NMSA 1978 Section 51-1-38, the provisions of NMSA 1978 Section 51-1-38 shall prevail.

E. STOPPING PAYMENT DUE TO ADMINISTRATIVE ERROR: Once an initial determination is made and payment of benefits is begun, payments shall not be stopped without prior notice and an opportunity to be heard pursuant to 11.3.300.500.9 NMAC. When payments are made as a result of administrative error by the department and are clearly not authorized by law, rule or regulation or any determination made pursuant to Subsection C of 11.3.300.308 NMAC, such payment shall not be deemed to have been made pursuant to a determination of eligibility.

F. EMPLOYER'S NOTICE OF A LABOR DISPUTE: When there is a strike, lock-out or other labor dispute, the employer shall file with the department after the commencement of such activity, and upon the demand of the department, a report of the existence and nature of the labor dispute, and the number of persons affected; and shall promptly provide the names, social security numbers and work classifications of all individuals unemployed due to the labor dispute, and whether and in what manner each individual is participating in the dispute or has a direct interest in the outcome.

G. TERMINATION OF CONTINUED CLAIMS: Payment of continued benefits to any person who has been determined eligible to receive benefits on an initial claim in accordance with 11.3.300.308 NMAC shall not thereafter be terminated without notice and an opportunity for a fact-finding interview.

[7-15-98; 11.3.300.308 NMAC - Rn & A, 11 NMAC 3.300.308, 01-01-2003; A, 11-15-2012; A, 07-31-2013]

### 11.3.300.314 FRAUDULENT CLAIMS:

A. CLAIMANT FRAUD: NMSA 1978 Section 51-1-38[(D)] (E) of the Unemployment Compensation Law provides: "Notwithstanding any

other provision of the Unemployment Compensation Law, ~~[including the provisions of Subsection J of Section 51-1-8 NMSA 1978,]~~ if any individual claiming benefits or waiting period credits ~~[shall]~~ in connection with such claim, ~~[make]~~ makes any false statement or representation, in writing or otherwise, knowing it to be false or ~~[shall]~~ knowingly ~~[fail]~~ fails to disclose any material fact in order to obtain or increase the amount of a benefit payment, such claim shall not constitute a valid claim for benefits in any amount or for waiting period credits but shall be void and of no effect for all purposes. The entire amount of the benefits obtained by means of such claim shall be, in addition to any other penalties provided herein, subject to recoupment by deduction from the claimant's future benefits or they may be recovered as provided for the collection of past due contributions in Subsection B of Section 51-1-36 NMSA 1978." The terms used in NMSA 1978, Section 51-1-38~~(D)~~ mean:

(1) "False" means a statement contrary to fact.

(2) ~~["Knowingly"]~~ "Knowing" means the person making the statement, at the time it was made, knew the statement to be false or should have known it to be false because the person had no reasonable basis for believing it to be true.

(3) "Knowingly fails to disclose any material fact" means the ~~[claimant]~~ person deliberately withholds information which the ~~[claimant]~~ person knows should be disclosed to the department.

(4) "Material fact" means the fact affects the eventual outcome of a transaction. A fact which, if known, would result in a determination adverse to the claimant or the employer is a material fact. A fact is not material if the failure to disclose it or the intentional misstatement of it would not cause injury. A fact which, if known, would not cause a denial or reduction of benefits or disqualification from receipt of benefits or avoid or reduce any contribution or other payment required from an employing unit under the Unemployment Compensation Law is not a material fact.

(5) "With intent to obtain benefits" means the claimant intended the statement to assist the claimant to obtain benefits. In the absence of facts to indicate otherwise, when concealment of a material fact by willful misstatement or nondisclosure occurs in connection with a claim for benefits, it is assumed that the claimant's intent was to obtain or increase the amount of a benefit payment. When facts are established which indicate a different intent, the conclusions as to the claimant's intent shall be based on consideration of all the facts and not merely an assumption.

(6) "To prevent or reduce the payment of benefits" means the employing

unit or officer or agent of an employing unit intended the statement to assist the employing unit or officer or agent of an employing unit to prevent or reduce the payment of benefits. In the absence of facts to indicate otherwise, when concealment of a material fact by willful misstatement or nondisclosure occurs in connection with the opposition to a claim for benefits, it is assumed that the employing unit or officer or agent of an employing unit's intent was to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid or reduce any contribution or other payment required from an employing unit under the Unemployment Compensation Law. When facts are established which indicate a different intent, the conclusions as to the employing unit or officer or agent of an employing unit's intent shall be based on consideration of all the facts and not merely an assumption.

B. Claimants and employers who inadvertently make a mistake or omission on the basis of information previously given them by the department ~~[-]~~ and cannot reasonably be expected to understand their responsibility shall not be subject to the provisions of NMSA 1978 Section 51-1-38(B) Section 51-1-38(D) and Section 51-1-38(F).

C. The department shall impose an administrative penalty pursuant to NMSA 1978 Section 51-1-38(A) for each week that a claimant knowingly makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase the amount of a benefit payment. Administrative penalties shall be imposed as follows:

(1) for each week of unreported or underreported earnings, the claimant shall forfeit all benefit rights for a period of four weeks, up to a maximum of fifty-two weeks; from the date of the determination or the date the claimant is next determined entitled to benefits;

(2) for each false statement on separation, eligibility, refusal of work and other issues, the claimant shall forfeit all benefit rights for a period of four weeks, up to a maximum of fifty-two weeks; from the date of the determination or the date the claimant is next determined entitled to benefits; and

(3) In any case where a claimant fraudulently obtained or increased benefits in two or more separate offenses, the claimant shall forfeit all benefit rights for fifty-two weeks from the date of the determination or the date the claimant is next determined to be entitled to benefits.

D. The department shall demand immediate repayment of any overpayment and civil penalty established pursuant to NMSA 1978 Section 51-1-38(B) or NMSA 1978 Section 51-1-38(D).

A warrant of levy and lien shall be filed in all cases where the overpayment and civil penalty [is] are not repaid immediately. Recovery of the overpayment and civil penalty may be by any means permitted by law. Recovery of fraudulent overpayments and civil penalty may include court awarded costs. The court costs awarded by the court shall be added to the overpayment and shall be collected in the same manner as the underlying overpayment and civil penalty.

E. Restitution of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the department from requesting criminal proceedings against such claimant.

F. The department shall impose a civil penalty pursuant to NMSA 1978 Section 51-1-38(B) upon every claimant who knowingly makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase the amount of a benefit payment. The total amount of the penalty shall be twenty-five percent of the amount of benefits overpaid as a result of the claimant's false statement or representation or knowing failure to disclose a material fact. The department shall apply the penalty as follows:

(1) an amount equal to the first fifteen percent of the amount of benefits overpaid as a result of the claimant's false statement or representation or knowing failure to disclose a material fact shall be deposited in the "unemployment compensation fund" set forth in NMSA 1978 Section 51-1-19;

(2) an amount equal to the remaining ten percent of the amount of benefits overpaid as a result of the claimant's false statement or representation or knowing failure to disclose a material fact shall be deposited in the Employment Security Department Fund.

G. Any payments received from a claimant for repayment of any overpayment and civil penalty shall be applied first to the principal amount of the overpayment and any payment in excess of the principal amount of the overpayment shall be applied to pay the civil penalty.

H. EMPLOYER FRAUD: NMSA 1978 Section 51-1-38(D) of the Unemployment Compensation Law provides: "In addition to the penalty pursuant to Subsection C of this section, any employing unit or officer or agent of an employing unit that makes a false statement or representation knowing it to be false or that knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled to benefits under the Unemployment Compensation Law shall be required to pay a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) as determined by rule established

by the department. The penalty shall be collected in a manner provided in NMSA 1978 Section 51-1-36(B) and distributed to the fund.”

I. When imposing a civil penalty upon employers found to have made a false statement or representation knowing it to be false or to have knowingly failed to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled to benefits under the Unemployment Compensation Law, the department shall adhere to the following guidelines:

(1) An initial violation shall subject the employer to a maximum penalty of \$500.00;

(2) A second violation within a period of three years of the previous violation shall subject the employer to a penalty that is no less than \$500.00 and no more than \$1,000.00;

(3) A third violation within a period of three years of the most recent violation shall subject the employer to a penalty that is no less than \$1,000.00 and no more than \$2,000.00;

(4) A fourth or subsequent violation within a period of three years of the most recent violation shall subject the employer to a penalty that is no less than \$2,000.00 and no more than \$10,000.00.

J. The department shall demand immediate repayment of any civil penalty established pursuant to NMSA 1978 Section 51-1-38(D). A warrant of levy and lien shall be filed in all cases where the civil penalty is not repaid immediately. Recovery of the civil penalty may be by any means permitted by law. Recovery of the civil penalty may include court awarded costs. The court costs awarded by the court shall be added to the civil penalty.

K. Payment of the civil penalty due to fraudulent misrepresentation or failure to disclose a material fact by any employing unit or officer or agent of an employing unit shall not preclude the department from requesting criminal proceedings against such employing unit or officer or agent of an employing unit. [7-15-98; 11.3.300.314 NMAC - Rn & A, 11 NMAC 3.300.314, 01-01-2003; A, 11-15-2012; A, 07-31-2013]

#### 11.3.300.324 COLLECTIONS:

A. Deferred collections: From time to time, the department may, at its discretion determine that it is not economically efficient to actively pursue collection of certain overpayments due to the claimant's situation or the department's resources. The department may cease or forbear active collection activities for either finite period or an indefinite period depending on the circumstances. However, overpayment debts will remain on the department's books as an obligation owed

by the claimant to the department. The department's discretion in this matter is final.

[B. ~~“Double affirmation”~~ means a situation in which a claimant has received benefits through a decision of the appeal tribunal which was subsequently affirmed by the secretary, the board of review or a court decision. In these situations, no action shall be taken to recover the benefits paid to the claimant even if such determination is later reversed. A remand by the appeal tribunal, secretary or the board of review for an additional hearing due to a determination of “good cause” for a failure to appear or any other reasons does not constitute a ruling in favor of the claimant for the purpose of the double affirmation rule.]

B. Money collected by the department with respect to an overpayment or civil penalty will be applied in the following order:

(1) costs incurred by the department to pursue collection of the overpayment or civil penalty;

(2) the principal amount of the overpayment;

(3) the portion of the civil penalty which equals fifteen percent of the overpayment amount that is deposited in the “unemployment compensation fund” set forth in NMSA 1978 Section 51-1-19 and;

(4) any remaining amount to the civil penalty.

[11.3.300.324 NMAC - N, 01-01-2003; A, 11-15-2012; A, 07-31-2013]

## NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

This is an amendment to 11.3.500 NMAC, Sections 7, 9 and 10 effective 07-31-2013.

#### 11.3.500.7 DEFINITIONS:

A. “Adjudicatory body” means the appeal tribunal, the board of review or other commissions or body within the department holding an adjudicatory hearing.

B. “Adjudicatory hearing” means a judicial or quasi-judicial hearing upon either the law or the evidence or both which allows the parties to present evidence, objections to evidence, documents and witnesses as well as cross-examine opposing parties' witnesses and evidence.

C. “Authorized representative” means an individual who, by virtue of his position within the department, is designated by the secretary to perform certain specific tasks on behalf of the department.

[D. ~~“Double affirmation”~~ means a situation in which a claimant has

received benefits through a decision of the appeal tribunal which was subsequently affirmed by the secretary, the board of review or a court decision. In these situations, no action shall be taken to recover the benefits paid to the claimant even if such determination is later reversed. A remand by the appeal tribunal, secretary or the board of review for an additional hearing due to a determination of “good cause” for a failure to appear or any other reasons does not constitute a ruling in favor of the claimant for the purpose of the double affirmation rule.]

[E] D. “Good cause” means a substantial reason, one that affords a legal excuse, a legally sufficient ground or reason. In determining whether good cause has been shown for permitting an untimely action or excusing the failure to act as required, the department may consider any relevant factors including, but not limited to, whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the party received timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party that prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party's physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action. However, good cause cannot be established to accept or permit an untimely action or to excuse the failure to act, as required, that was caused by the party's failure to keep the department directly and promptly informed by written, signed statement of the claimant's, employer's or employing unit's correct mailing address. A written decision concerning the existence of good cause need not contain findings of fact on every relevant factor, but the basis for the decision must be apparent from the order.

[F] E. “Precedent manual” means a compilation of decisions of the appeal tribunal and board of review designated significant by the secretary or the general counsel, but with the parties' names and identifying information redacted and removed.

[G] E. “Administrative law judge” means the individual whose job it is to conduct appeal tribunal hearings and make decisions on unemployment insurance eligibility or employer charges. This term is synonymous with the term “hearing officer” as set forth in NMSA 1978, Section 51-1-8. [11.3.500.7 NMAC - N, 01-01-2003; A, 11-15-2012; A, 07-31-2013]

#### 11.3.500.9 ADJUDICATORY PROCEEDINGS GENERALLY:



A. Right to representation: In any adjudicatory hearing before the department:

(1) Any party may represent himself or be represented by an attorney at law or by any other person qualified to represent the party in the matters under consideration. The secretary may bar attorneys and authorized representatives from appearing on behalf of others in proceedings before the department if, the attorney or authorized representative's previous' conduct has established to the department's satisfaction that the attorney or authorized representative is unlikely to provide competent representation in future proceedings.

(2) A partnership may be represented by any of its employees, members or duly authorized representative. A corporation or association may be represented by an officer, employee or any duly authorized representative. Any governmental entity may be represented by an officer or employee or any other authorized person.

(3) The presiding officer, including the secretary may, for lack of qualifications or other sufficient cause, bar any person from representing any party, in such circumstances, the reasons for such bar shall be set out in the record of proceedings.

B. The unauthorized practice of law: Any party may be represented by an attorney at law licensed to practice in the courts of this state. A representative or agent other than licensed attorneys may represent any party only to the extent that such participation does not constitute unauthorized practice of law under the statute and rules of the courts of the state of New Mexico.

C. Copies: Consistent with the provisions of NMSA, 1978 Section 51-1-32 and 11.3.100.109 NMAC, while any proceeding before the department is ongoing [~~or within the period for appeal;~~] a party to such proceeding may request and receive from the department, without charge, one set of copies of the department files and records, including but not limited to investigation reports, statements, memoranda, correspondence, tape recordings or transcripts of hearings or other data, pertaining to matters under consideration or scheduled for hearing or other proceeding before the department. Thereafter, copies shall be charged at the department's usual rate for copying.

D. Notice of hearing: Upon the scheduling of an adjudicatory hearing before the appeal tribunal on any appeal, a notice of the hearing shall be transmitted to all interested parties at least ten (10) calendar days prior to the date of the adjudicatory hearing and shall include:

(1) a statement of the time, place and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a short and plain statement of the foreseeable issues so that all parties have sufficient notice to afford each party reasonable opportunity to prepare; if any issue cannot be stated in advance of the hearing, it shall be stated as soon as practicable; in all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after statement or amendment to afford all parties reasonable opportunity to prepare or the parties may waive notice of such issue on the record.

(4) Any party to an appeal before the appeal tribunal may elect, using the self-service feature of the claims processing website, to have all notices of hearing for that appeal delivered electronically rather than by paper notice through the mail. Such electronic notification shall be deemed legally sufficient notice for all purposes and the party electing that electronic notification will be deemed to have acknowledged their responsibility to exercise due diligence in checking the website for notifications. For parties electing electronic notification, such notification shall continue until the party has taken all necessary steps change their notification preference using the self-service feature of the website. Until the party's notification preference has been changed, that party's obligation to exercise due diligence in checking the website for notifications will remain in effect.

(5) If an adjudicatory hearing has been scheduled and a notice of hearing has already been issued to an interested party before that interested party's attorney or authorized representative has filed its entry of appearance in the matter, notice shall be deemed to be sufficient.

E. Pre-hearing procedure generally:

(1) Stipulations: The parties to an appeal, with the consent of the appeal tribunal, may stipulate in writing to any or all facts involved. The appeal tribunal may decide the appeal on the basis of such stipulation, or, in its discretion, may set the appeal down for hearing and take such further evidence, as it deems necessary, to enable it to determine the appeal. Stipulations will only be accepted if executed on a form approved by the department. A stipulation by the employer is not a guarantee that a claimant will be eligible for payment. The claimant shall only be eligible if the facts to which the employer stipulates provide a sufficient basis under the Unemployment Compensation Law to approve a claim for payment and the claimant is otherwise eligible to receive payment, i.e., has no other basis for disqualification or denial.

(2) Authority of authorized

representatives regarding the gathering of evidence, issuing subpoenas, authorizing depositions, and administering oaths and affirmations: Authorized representatives of the department may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, documents, papers or other objects necessary and relevant to any proceeding before it or its authorized representative. An authorized representative may administer oaths and affirmations, and certify to official acts. An authorized representative in any proceeding may authorize the taking of depositions of witnesses, including parties within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in the district court, and the deposition may be used in the same manner and to the same extent as permitted in the district court.

F. Subpoenas:

(1) "Subpoena" means an official directive or order by an administrative law judge or quasi-judicial official directing the recipient to appear and testify as a witness. The subpoena may require witnesses to bring documents with them when they come to testify.

(2) The department's authority to issue subpoenas is found at NMSA, 1978 §51-1-8(L) and 51-1-28. Department subpoenas can be served personally at least five (5) days prior to the appearance or by certified mail posted at least ten (10) days prior to the appearance date.

(3) Issuance and challenges to subpoenas: The adjudicatory body or other authorized representative of the department may issue subpoenas to compel attendance of witnesses and production of records in connection with proceedings before the adjudicatory body or department. NMSA 1978 Sections 51-1-28 & 29.

(a) Who may request: Any party to an adjudicatory proceeding may make written application to the applicable adjudicatory body for the issuance of a subpoena.

(b) Contents of requests for subpoena: The party seeking the subpoena must reasonably identify and specify the evidence or documents sought and show the relevance of such evidence or documents to the issue under consideration. The proposed subpoena shall show upon its face the name and address of the party at whose request the subpoena was issued.

(c) Decision regarding issuance of subpoena: The adjudicatory body, at its discretion, may issue the subpoena upon the written application or may schedule a hearing or conference on the application to hear argument and objections from interested parties for the purpose of determining



whether the subpoena should issue. If such a hearing is held, the adjudicatory body may make a ruling on the record during the hearing, or may, in its discretion, issue a written decision, informing the parties of the decision and of their right to further appeal.

(d) Challenge to issued subpoena or a request to quash: Any witness summoned may petition the department to quash or modify a subpoena served on the witness. The department shall give prompt notice of such petition to all interested parties. After the investigation or hearing, whichever the department considers appropriate, it may grant the petition in whole or part, or it may deny the petition upon a finding that the testimony or the evidence required to be produced does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested, or for any other reason that justice requires.

(e) Appeal of disputes: The stated reason for the request for the subpoena and the stated reason for the opposition as well as the administrative law judge's decision in regard to the subpoena shall be part of the record on appeal.

(f) Order of protection: If the department denies the petition to quash the subpoena, the aggrieved party may petition the district court of either the county where he resides, or, in the case of a corporation, the county where it has its principal office, or the county where the hearing or proceeding will be held, for an order of protection.

(g) Witness fees and mileage: If a written request to the secretary is made prior to appearing to testify or within five (5) days after testifying, witnesses, other than parties to a proceeding or the parties' designated agents or representatives, subpoenaed for any appeal tribunal hearing or other department proceeding may be paid witness and mileage fees by the department. Mileage and witness fees may be permitted as is deemed reasonable by the secretary based on the specific witness' situation but in no event will a witness be paid more than the statutory amount allowed witnesses appearing in the district courts of this state.

(h) Sanctions to compel compliance with subpoenas: In case of failure to comply with any subpoena issued and served under the department's statutory authority or for the refusal of any person to testify to any matter regarding which he may be interrogated lawfully in a proceeding before an adjudicatory body of the department, the department may apply to the district court either in the county of the person's residence or in the county where the hearing or proceeding is being held, for an order to compel compliance with the

subpoena or the furnishing of information or the giving of testimony. The prevailing party is entitled to costs of the enforcement proceeding.

(i) Sanctions against parties for witnesses' failure to comply with subpoenas: When a subpoenaed witness fails to attend or testify, if a party exercises substantial control or influence over the witness, such as an employee, relative of a party employer or a relative of a party claimant, the adjudicatory body can deem that, if the witness had appeared and testified, the testimony would have been unfavorable to the party controlling or influencing the witness.

(j) If a party or a subpoenaed witness fails or refuses to produce records or documentary evidence pursuant to an order or subpoena of the adjudicatory body, the adjudicatory body can deem that, if the records or documentary evidence had been produced, the evidence would have been unfavorable to the party failing or refusing to produce the records or documentary evidence or to the party controlling or influencing the witness who failed or refused to produce the records or documentary evidence.

G. Disqualification of board of review members and appeal tribunal administrative law judges: An appeal tribunal administrative law judge or board of review member shall withdraw from any proceeding in which the appeal tribunal administrative law judge or board of review member cannot accord a fair and impartial hearing or consideration and from any proceeding in which the appeal tribunal administrative law judge or board of review member has an interest. Any party may request a disqualification of an appeal tribunal administrative law judge or board of review member on the grounds of the person's inability to be fair and impartial, by filing an affidavit or written statement or making a statement on the record with the appeal tribunal or board of review promptly upon the discovery of the alleged grounds for disqualification, stating with particularity the grounds upon which it is claimed that the person cannot be fair and impartial. The disqualification shall be mandatory if sufficient factual basis is set forth in the affidavit of disqualification. If a board of review member is disqualified pursuant to this regulation, the remaining board of review members may appoint an appeal tribunal administrative law judge or other qualified department representative to sit on the board of review for the proceeding involved. The grant or denial of a requested disqualification can be considered in an appeal on the merits.

H. Attorneys at law and authorized representatives: Prior to or at the commencement of any adjudicatory hearing, all attorneys at law or other authorized representatives shall file a written entry of

appearance which shall be made a part of the record and a copy shall be furnished by the attorney or representative to the opposing party. The entry of appearance shall be signed by the attorney at law or authorized representative, whose mailing address, telephone number and other contact addresses shall be provided. An attorney or representative who has provided notice of representation will be deemed to continue such representation until a written notification of the withdrawal of such representation is provided to all parties, the administrative law judge or the board of review. Even if an attorney or authorized representative has entered his appearance on behalf of a party, the party may appear on his own behalf without the attorney or authorized representative.

I. Ex parte communications: No party or representative of a party or any other person shall communicate off the record about the merits of the case with the cabinet secretary, any administrative law judge or board of review member who participates in making the decision for any adjudicatory hearing, unless the communication is written and a copy of the communication is transmitted to all interested parties to the proceeding. The cabinet secretary, any administrative law judge, board of review member or their representatives shall not communicate off the record about the merits of an adjudicatory hearing with any party or representative of a party or any other person, unless a copy of the communication is sent to all interested parties in the proceeding.

J. Requirements for hearing evidence or reviewing record: The cabinet secretary, board of review member or appeal tribunal administrative law judge shall not participate in any decision for any adjudicatory hearing unless the cabinet secretary, board of review member or appeal tribunal administrative law judge has heard the evidence or reviewed the record.

[11.3.500.9 NMAC - N, 01-01-2003; A, 11-15-2012; A, 07-31-2013]

### **11.3.500.10 HEARING PROCEDURE BEFORE THE APPEAL TRIBUNAL:**

A. Conduct of adjudicatory hearings:

(1) Adjudicatory hearings before the appeal tribunal shall be conducted in such a manner that all parties are afforded basic rights of due process and that all pertinent facts necessary to the determination of the rights of the parties are obtained. All hearings and proceedings will be conducted informally in such a manner as to ascertain the substantial rights of the parties and will not be governed by common law or statutory rules as to the admissibility of evidence or by technical rules of procedure, but the

procedures shall afford the parties equally and impartially the right to:

(a) call and examine witnesses, cross examine witnesses;

(b) introduce exhibits and offer rebuttal evidence;

(c) object to questions and to the introduction of improper or irrelevant testimony or evidence; and

(d) submit written expositions of the case, within the discretion of the administrative law judge.

(2) The appeal tribunal, on its own initiative:

(a) may examine parties and witnesses;

(b) require additional evidence as it finds necessary to the determination of the issues before it;

(c) may exclude testimony and evidence which it finds to be incompetent, irrelevant or otherwise improper by standards of common reasonableness;

(d) if it deems appropriate, the appeal tribunal may permit opening and closing statements.

B. Opportunity for fair hearing: In conducting adjudicatory hearings, the appeal tribunal shall afford all parties an opportunity for a full and fair hearing including an opportunity to respond and present evidence and argument on all issues involved; provided that the term "adjudicatory hearing" as used in this rule does not apply to fact-finding interviews conducted by the department representative for purposes of making an initial determination of eligibility for benefits or liability for contributions, payments in lieu of contributions, interest or penalties under the Unemployment Compensation Law.

C. C o n t i n u a n c e , adjournment and reopening of adjudicatory hearings:

(1) An adjudicatory hearing before an appeal tribunal administrative law judge, for good cause shown, may be continued or adjourned upon the request of a party or upon the appeal tribunal's own motion, at any time before the hearing is concluded. A claimant's right to a prompt determination of claimant's eligibility and payment of benefits shall not be impaired by undue delay of proceedings.

(2) If the party appealing or any other party fails to appear at any scheduled adjudicatory hearing, the appeal tribunal may, in its best judgment, either adjourn the hearing until a later date or proceed to render its decision on the record and the evidence then before it. Any decision shall be subject to reopening before the appeal tribunal upon a showing within fifteen (15) days after the date of the decision that there was good cause for the party's failure to appear.

(3) A reopening of any adjudicatory hearing shall be granted upon showing of

good cause, including good cause for not appearing at the scheduled hearing, or may be ordered on the appeal tribunal's, the board of review's or the secretary's own motion for good cause. A request for reopening shall be made as soon as reasonably possible but in no event later than fifteen (15) days after the decision of the appeal tribunal was mailed.

(4) A request for a continuance, adjournment or reopening shall be made to the appeal tribunal administrative law judge as identified on the notice of hearing. If the administrative law judge finds good cause for failing to appear, the merits of the appeal shall be set for hearing. Notice of the date, time and place of a reopened, postponed or adjourned hearing shall be given to the parties or their representatives and shall include a statement of the issues to be heard. The administrative law judge shall issue a decision approving or denying a request for a continuance adjournment or reopening. ~~[Either party may file an appeal of any written decision issued by the administrative law judge to the secretary.]~~

(5) A request for reopening made later than fifteen (15) days after the decision of the appeal tribunal was mailed shall be heard by the secretary or the board of review on the reason for the untimely request for the reopening. If the secretary or the board of review finds good cause for the late request, the merits of the appeal shall be set for hearing before the appeal tribunal. Notice of the date, time and place of a reopened hearing shall be given to the parties or their representatives and shall include a statement of the issues to be heard.

D. Authority over conduct of adjudicatory hearings. The appeal tribunal shall have and shall exercise full authority over the conduct and behavior of parties and witnesses appearing before it to insure a fair, orderly adjudicatory hearing and an expeditious conclusion of the proceedings.

E. Mode of hearings:

(1) The appeal tribunal may conduct the adjudicatory hearing by telephone or in person at the discretion of the appeal tribunal. The mode of conducting the hearing will be as indicated in the notice setting the hearing.

(2) Notice of telephone hearing: If the hearing is to be by telephone, the notice shall so inform the parties and will include instructions for informing the administrative law judge of the necessary telephone numbers. If the hearing is a telephonic hearing, no party or representative will be permitted to attend in person. If the hearing is an in-person hearing, at the discretion of the administrative law judge, a party, witness or representative will be permitted to appear telephonically.

F. Exhibits:

(1) Exchange of exhibits prior to hearings: At least [24] 48 hours prior to any

hearing, a party seeking to introduce exhibits shall submit to the administrative law judge the documents or copies thereof that the party may seek to introduce.

(a) A party seeking to introduce exhibits shall provide copies of all proposed exhibits to the other party. The copies shall be transmitted by the offering party in a manner to insure their receipt by the other party at least 48 hours prior to the date and time of the scheduled hearing.

(b) A party seeking to introduce exhibits shall provide copies of all proposed exhibits to the administrative law judge. The copies shall be transmitted by the offering party in a manner to insure their receipt by the other party at least [24] 48 hours prior to the date and time of the scheduled hearing. In no event shall the administrative law judge be provided copies of exhibits not previously transmitted by the offering party to the opposing party.

(c) Documents not submitted in accordance with this subsection shall be denied admission and denied consideration by the department:

(i) unless it is apparent that the particular document was previously seen by the party whose interest is affected, that party acknowledges having seen the document and has no objection to its admission; or

(ii) the administrative law judge, in the judge's discretion, determines that fundamental fairness and the proper administration of the Unemployment Compensation Law requires the admission of the document.

(d) In any case where the administrative law judge determines that documentary evidence will be admitted over the objection of a party that the party has not had an opportunity to review and consider the evidence, a reasonable continuance shall be granted by the administrative law judge to give the objecting party an opportunity to review the evidence.

(2) Marking exhibits: All exhibits tendered to the administrative law judge shall be separately marked for identification. The employer's exhibits shall be denoted E-1, E-2, E-3 and so forth; the claimant's exhibits shall be denoted C-1, C-2, C-3 and so forth. A file, such as a personnel file, containing voluminous documents need not be separately marked, but the pages shall be individually numbered by the offering party prior to admission. Failure to sequentially number the pages of a voluminous exhibit will be grounds to deny the admission of the exhibit.

(3) Exhibits admitted and considered by the administrative law judge shall be individually identified on the record.

(4) Exhibits denied admission: The reason for the denial of admission of tendered exhibits shall be clearly stated

on the record. Typical, but not exclusive, reasons for the denial of admission of an exhibit is lack of relevancy, immateriality, redundancy and voluminous unnumbered pages or documents. Exhibits offered and denied admission shall be retained in the record, but shall not form the basis for the decision of the administrative law judge. The written decision shall reiterate the statement of exhibits denied admission and the basis for the denial.

G. Record of hearings:

(1) Proper record: The appeal tribunal shall ensure that all of the testimony, objections and motions or other matters in connection therewith are fully and accurately recorded, in such a manner that a complete and accurate transcript can be rendered therefrom as needed.

(2) The record in an adjudicatory hearing shall include:

(a) all documents in the department's files, pleadings, motions and previous rulings;

(b) documentary evidence received or considered;

(c) a statement of matters officially noticed;

(d) questions, tenders of evidence, offers of proof, objections and rulings thereon in the form of a tape recording or transcript;

(e) findings and conclusions; and

(f) any decision, opinion or report by the cabinet secretary, board of review members or appeal tribunal administrative law judge conducting the hearing.

(3) Tape or digital recordings: The department deems that a tape or digital recording of a proceeding made on the department's system is the official recording of the record.

(a) Inaudible recording: If the tape or digital recording or a significant portion of it is demonstrated as inaudible or otherwise unusable, if the parties do not stipulate as to the matters which would have appeared on the recording if usable, the appeal tribunal may order a rehearing de novo of all matters or of only the matters which were on the unusable portions of recording.

(b) Official transcript: The department or either party, at the party's expense, may prepare a typed transcript of any such tape recording for the use of the parties. Any typed transcript prepared by the department or under its supervision may be designated by the appeal tribunal as the official transcript. Typed transcripts prepared by a party shall not be deemed official transcripts unless such transcript was transcribed with the department's consent and prepared either in-person or from a department tape or digital recording by an individual approved by the department.

(c) Availability of tapes: Upon written application, for good cause shown,

a duplicate copy of the recording of all testimony, objections and motions or other matters will be supplied to any party to the proceeding. Unless the applicant is entitled to the a copy of the recording without charge or otherwise shows good cause as to why the party should not be charged as provided in ~~[11.3.100.109]~~ 11.3.100.106 NMAC, the applicant may be required to pay for a copy of the recording.

H. Factual information to be considered: All evidence, including any records, investigation reports and documents in the possession of the adjudicatory body which the department desires to avail itself as evidence in making a decision, shall be made a part of the record in the proceedings, and no other factual information or evidence shall be considered, except as provided in this section. Documentary evidence may be received in evidence in the form of copies or excerpts or by specific citation to page numbers in published documents.

I. Briefs or memoranda of law, requested findings of fact and conclusions of law: At any time during an adjudicatory hearing and prior to a decision, the parties may be afforded a reasonable opportunity to submit briefs or memoranda of law, proposed findings of fact and conclusions of law, together with supporting reasons including citations to the record and copies of case law, for the consideration of the adjudicatory body.

J. Official notice: Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the board of review or appeal tribunal administrative law judge, but whenever any such member or officer takes official notice of a fact, the noticed fact and its source shall be stated at the earliest practicable time, before or during the adjudicatory hearing, but before the final decision, and any party shall, on timely request, be afforded an opportunity to show the contrary.

K. Specialized knowledge of department: The experience, technical competence and specialized knowledge of the department and its staff may be utilized in the evaluation of the evidence by the adjudicatory bodies of the department.

L. Decision of the appeal tribunal:

(1) Decision in writing: Following the conclusion of an adjudicatory hearing on an appeal, the appeal tribunal shall promptly announce its decision on the case. The decision shall be in writing, shall include findings of fact and conclusions of law, and shall be signed by the administrative law judge who heard the appeal.

(2) Findings of fact shall be based exclusively on the record, the evidence presented at the tribunal hearing and matters officially noted.

(3) The residuum rule shall apply in the issuance of all decisions. This rule requires that the decision of the department's appeal tribunal be supported by "substantial evidence", that is evidence which would be admissible in a court of law. A decision of the appeal tribunal cannot be made on the basis of controverted hearsay evidence alone; there must be a residuum of legal evidence which would be admissible in a court of law.

(4) Where an appeal was not filed within the statutory appeal period, the appeal tribunal shall, after review of the record conduct an evidentiary hearing with notice to all interested parties to determine whether the appellant has good cause for failure to timely appeal from an initial determination. Any decision that grants a request for reopening or finds good cause for failure to timely appeal from an initial determination cannot be appealed. Any decision that denies a request for reopening shall include the appeal tribunal's findings and conclusions for the denial. Either party if aggrieved, may file an appeal on the merits of any written decision issued by the administrative law judge to the secretary.

(5) Publication of decision: Copies of any decision issued by the appeal tribunal shall be promptly transmitted to all interested parties to the appeal.

M. Remand by appeal tribunal: The appeal tribunal may, in its discretion, remand any issue developed from evidence presented at the hearing or apparent from the existing record to the department with an order directing that a determination be made with regard to that issue or that additional procedures be taken to perfect a determination already issued or to make other disposition in the matter. [11.3.500.10 NMAC - N, 01-01-2003; A, 11-15-2012; A, 07-31-2013]

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**End of Adopted Rules Section**

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## Other Material Related to Administrative Law

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF STATE IMPLEMENTATION PLAN REVISION

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on October 8, 2013 at 10:00 a.m. at the Grant County Business and Conference Center, Fort Bayard Room, 3031 Highway 180 East, Silver City, New Mexico. The purpose of the hearing is to consider the matter of No. EIB 13-05(R), proposed changes to the New Mexico State Implementation Plan ("SIP") revision for the Grant County, New Mexico sulfur dioxide maintenance area.

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

The purpose of the public hearing is to consider and take possible action on a petition from NMED regarding proposed SIP revision to the Grant County Sulfur Dioxide Maintenance SIP. Section 175A of the Federal Clean Air Act ("CAA") requires states to develop state implementation plans to provide for the maintenance of the National Ambient Air Quality Standards ("NAAQS") for those areas that have violated a standard (referred to as a nonattainment area) and for which there is sufficient data to prove that area is now in compliance with the standard. In February 2003, NMED submitted to the U.S. Environmental Protection Agency ("EPA") a Redesignation Request and Maintenance Plan for the Grant County 24-hour SO<sub>2</sub> nonattainment area. This submittal was subsequently approved by EPA on September 18, 2003. States are required to revise maintenance SIPs 10 years after the EPA approves an area's initial maintenance plan. Upon adoption by the Board, SIP revision for the Grant County, New Mexico sulfur dioxide maintenance area would be submitted to EPA for incorporation into New Mexico's SIP.

The NMED will host an informational open house on the proposed SIP revision for the Grant County, New Mexico sulfur dioxide maintenance area at the NMED Air Quality Bureau Office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico 87505, from 12:00p.m.-3:00p.m. on September 4, 2013. To attend the informational open house, please contact Gail Cooke at 505-476-4319 or [gail.cooke@state.nm.us](mailto:gail.cooke@state.nm.us).

The proposed revised plan may be reviewed during regular business hours at the NMED Silver City District Field office located at 3082 32nd Street, By-Pass Road, Suite D Silver City, New Mexico. Full text of NMED's proposed revised regulations are available on NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), or by contacting Gail Cooke at (505) 476-4319 or [gail.cooke@state.nm.us](mailto:gail.cooke@state.nm.us).

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

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

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

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on September 18, 2013 and should reference the docket number, EIB 13-05(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Board Administrator  
Environmental Improvement Board  
P.O. Box 5469  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-0310

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

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

Persons having a disability and needing help in being a part of this hearing process should contact Juan Carlos Borrego of the NMED Human Resources Bureau by September 23, 2013 at P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-0424 or email [juancarlos.borrego@state.nm.us](mailto:juancarlos.borrego@state.nm.us). TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed SIP revision at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

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### End of Other Related Material Section

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## Submittal Deadlines and Publication Dates 2013

Volume XXIV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 18	March 29
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 3	June 14
Issue Number 12	June 17	June 28
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	September 3	September 16
Issue Number 18	September 17	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

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For further information, call (505) 476-7907.