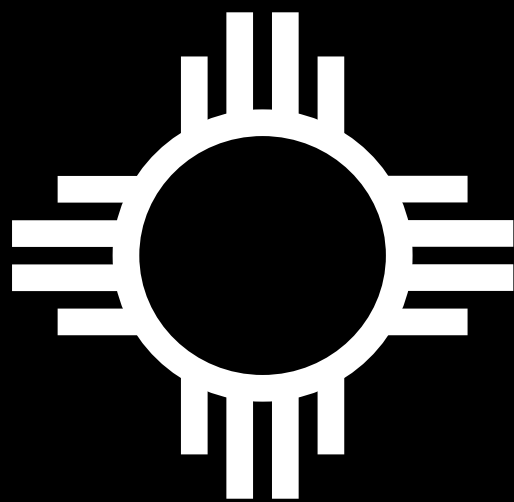


**NEW  
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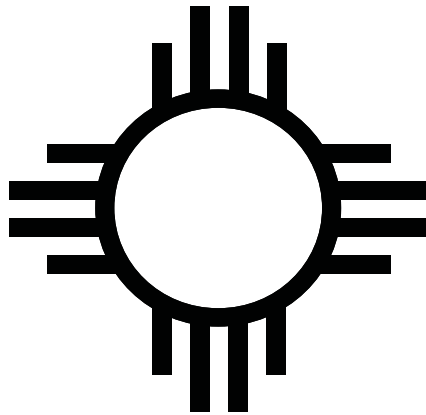


Volume XXIV  
Issue Number 15  
August 15, 2013



# **New Mexico Register**

**Volume XXIV, Issue Number 15**  
**August 15, 2013**



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

The Commission of Public Records  
Administrative Law Division  
Santa Fe, New Mexico  
2013

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# New Mexico Register

Volume XXIV, Number 15

August 15, 2013

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### Adopted Rules

#### Effective Date and Validity of Rule Filings

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

*A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered*

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO MINING COMMISSION

#### NOTICE OF PUBLIC MEETING AND HEARING OF THE NEW MEXICO MINING COMMISSION

The New Mexico Mining Commission will hold a regular meeting and a public hearing at **9:00 A.M. Wednesday, October 2, 2013** in Porter Hall on the 1st floor of the Wendell Chino Building located at **1220 South Saint Francis Drive** in Santa Fe, NM.

During the meeting, the Mining Commission will conduct a public hearing on a petition for rulemaking submitted by the Mining and Minerals Division on June 26, 2013 (**13-02**). Petition **13-02** requests amendments to Fees, 19.10.2.202 NMAC, specifically the petition requests removal of the sunset provision.

At the conclusion of the hearing, the Mining Commission may deliberate and take action on the petition. The Mining Commission may also consider other items on its agenda or other issues that come before it.

The Commission's Guidelines for Rulemaking can be found at <http://www.emnrd.state.nm.us/MMD/NMMC/documents/guidelinesforrulemaking.pdf>. Any person intending to present technical testimony at the public hearing must submit a notice of intent that identifies the party and the name of the technical witness, summarizes the testimony, includes any recommended modifications to the regulatory proposal and lists and describes all anticipated exhibits. Notices of intent to present technical testimony must be received by John Pfeil, Clerk of the Mining Commission, C/O Mining and Minerals Division, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505 not later than 5 p.m. **Tuesday, September 17, 2013** and should reference the petition number and the date of the hearing. Any member of the public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any person may submit a written statement at the hearing, or may file the written statement prior to the hearing to the address listed in this notice.

A copy of the petition and the proposed regulatory change can be obtained on the MMD website at <http://www.emnrd.state.nm.us/MMD/NMMC/MineCommProposedRuleChanges.html> or by contacting John Pfeil at 476-3400. A copy of the draft agenda for the meeting/

hearing will be available 72 hours before the meeting and may be obtained by contacting Mr. Pfeil. If you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Pfeil at least 48 hours prior to the hearing. Public documents can be provided in various accessible forms.

### NEW MEXICO PUBLIC EDUCATION DEPARTMENT

#### NEW MEXICO PUBLIC EDUCATION DEPARTMENT NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Tuesday, September 17, 2013, from 10:00 a.m. to noon. The purpose of the public hearing will be to obtain input on the proposed amendments to 6.80.4 NMAC (**CHARTER SCHOOL APPLICATION AND APPEAL REQUIREMENTS**).

Interested individuals may provide comments at the public hearing and/or submit written comments to Ms. Mary H. Deets, Administrative Assistant, Office of General Counsel, via email at [Rule.FeedBack@state.nm.us](mailto:Rule.FeedBack@state.nm.us), fax (505) 827-6681, or directed to Ms. Deets at Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) under the "Public Notices" link, or obtained from Ms. Deets by calling (505) 827-6641.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Ms Deets as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

### NEW MEXICO COMMISSION OF PUBLIC RECORDS

#### NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has scheduled a regular meeting for Tuesday, August 27, 2013, at 9:30 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by August 5, 2013. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the meeting.

#### NOTICE OF RULEMAKING

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

#### Amendment

1.18.333 NMAC ERRDS, Taxation and Revenue

### NEW MEXICO RACING COMMISSION

#### NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on August 22, 2013. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 10:30 a.m. The meeting will be held in the Boardroom at 4900 Alameda Blvd. NE, Albuquerque, NM.

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 15.2.1 NMAC, 15.2.3 NMAC, 15.2.6 NMAC, 15.2.5 NMAC and 16.47.1 NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The

Commission will vote on the proposed rules during the meeting.

Copies of the proposed rules may be obtained from Vince Mares, Executive Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the commission of such needs at least five days prior to the meeting.

Vince Mares  
Executive Director

Dated: July 31, 2013

## NEW MEXICO REAL ESTATE COMMISSION

### NEW MEXICO REAL ESTATE COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING SEPTEMBER 16, 2013

The New Mexico Real Estate Commission will hold a regular meeting and rule hearing on Monday, September 16, 2013 at 9 a.m. at the Real Estate Commission offices at 5200 Oakland Avenue NE in Albuquerque, New Mexico.

The purpose of the rule hearing is to consider amendments to Commission rules including time limits on licensee fingerprinting (16.61.7); repeal of the foreign broker provision (16.61.1.7 BB); conditions of license surrender upon suspension or revocation (16.61.12.9); an adjustment to the statutory minimum balance in the Real Estate Recovery Fund (16.61.14.18); a requirement that there be an in-state instructor for all broker education programs (16.61.15.11); an amendment to the associate broker rule to make it consistent with the qualifying broker rule related to errors and omissions insurance (16.61.17.9); a new rule providing for expedited processing of license applications from military members and their spouses (16.61.3); an amendment permitting commissions to be paid to surviving spouses of deceased brokers (16.61.16.9 H); reinstatement of a rule requiring written designation of a broker-in-charge (16.61.16.9 J); written disclosure of potential conflicts of interest in a real estate transaction (16.61.19.8 G);

amendments to the trust accounts rule related to deposits of funds from management of property owned by LLC's (16.61.23.11 C (4)); and reinstatement of a rule requiring Commission approval for depositing broker funds in trust accounts (16.61.23.11 D (3)); clarification of what documents brokers are required to provide owners under a property management agreement (16.61.24.12 C); reinstatement of a rule requiring clear labeling of property management trust accounts (16.61.24.11 A); and amendments to definitions required by changes to the aforementioned rules (16.61.1.7).

The proposed amendments, public comments, and written comments made and submitted during the rule hearing will be voted on by the Commission at the regular Commission meeting immediately following the rule hearing.

Copies of the proposed rules may be obtained in person from Wayne W. Ciddio, Executive Secretary of the New Mexico Real Estate Commission, 5200 Oakland Avenue NE in Albuquerque, by calling (505) 222-9829 or by emailing at [wayne.ciddio@state.nm.us](mailto:wayne.ciddio@state.nm.us). Interested persons may submit their comments on the proposed rules in writing or by email at the above addresses or by participating in the rule hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Commission office 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 Commission Administrator at the address indicated herein if a summary or other type of accessible format is needed.

## 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: 14.12.3 NMAC, Modular Structures; 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.aragon@state.nm.us](mailto:fermin.aragon@state.nm.us) Fax No. 505-476-4619.

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES and MANUFACTURED HOUSING DIVISIONS

### STATE OF NEW MEXICO CONSTRUCTION INDUSTRIES AND MANUFACTURED HOUSING DIVISIONS of the

Regulation and Licensing Department

#### NOTICE OF PUBLIC HEARINGS

Public hearings on the proposed changes to the following MHD Rule: 14.12.2.14 NMAC, Licensure Requirements; 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 and Manufactured Housing Division’s website: [www.rld.state.nm.us/construction](http://www.rld.state.nm.us/construction) and at the CID/MHD 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 and Manufactured Housing 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: [jesus.carrasco@state.nm.us](mailto:jesus.carrasco@state.nm.us) Fax No. 505-476-4619.

**NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE**

**BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE**

**IN THE MATTER OF THE ADOPTION OF )  
 AMENDMENTS TO THE TITLE INSURANCE )  
 REGULATIONS CODIFIED AT TITLE 13, )  
 CHAPTER 14 NMAC, DEEMED NECESSARY )  
 BY THE SUPERINTENDENT OF INSURANCE ) DOCKET NO. 13-00354-IN  
 FOLLOWING PUBLIC COMMENT AND )  
 HEARING AS REQUIRED BIENNIALLY )  
 PURSUANT TO NMSA 1978, SECTION )  
 59A-30-8(A) (2009). )**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance (Superintendent), New Mexico Office of Superintendent of Insurance (OSI), upon the Superintendent’s own motion, proposes to adopt any amendments deemed necessary following public comment and hearing conducted pursuant to the statutory mandate of NMSA 1978, Section 59A-30-8(A) (2009). Being duly advised,

**THE SUPERINTENDENT FINDS AND CONCLUDES:**

1. The Superintendent has jurisdiction over the subject matter and the parties in this proceeding pursuant to the New Mexico Insurance Code, 1978 NMSA, Section 59A-1-1 *et seq.* (Insurance Code).
2. NMSA 1978, Section 59A-30-8(A) (2009) requires the Superintendent to hold a biennial hearing during November to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent.
3. Accordingly, OSI’s title insurance staff (Staff) and all other interested persons are directed to propose amendments to Title 13, Chapter 14 of the New Mexico Administrative Code (Title Regulations) and/or provide written or oral comments regarding proposed changes to the title Regulations as set forth below.
4. Copies of the Title Regulations may be downloaded from the OSI’s website, [www.OSI.state.nm.us](http://www.OSI.state.nm.us).
5. Staff is requested and the public is encouraged to file written proposals or comments although oral comments will be accepted at the public hearing in this case. Interested persons should file their written proposals or comments no later than **Tuesday, October 8, 2013**. Any responsive proposals or comments should be filed no later than **Friday, October 18, 2013**. Proposals suggesting changes to the Title Regulations should state and discuss the particular reasons for the suggested changes; cite to any state or federal law, or other materials referred to in the proposal or comment; cite to all other sections of the Title Regulations that may be affected in any way by the proposed amendments, whether specific language changes to those other sections of the Title Regulations are necessary or not; and should include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the Title Regulations should be in legislative format. All pleadings, including comments and suggested changes to the Title Regulations, should bear the caption and docket number contained at the top of this NOPR.
6. Written proposals or comments and written responses to proposals or comments shall be filed by sending original copies to:

Mr. Mariano Romero  
 OSI Records  
 Management Bureau  
 1120 Paseo de Peralta  
 P.O. Box 1689  
 Santa Fe, NM 87504-1689  
 ATTN: Case No. 13-00354-IN  
 7. A pre-hearing conference should be held on **Wednesday, October 30, 2013; at 9:00 a.m.** for the purpose of narrowing the issues to be addressed at the public comment hearing and hearing any pending motions that have been filed in the case. The Superintendent or his designated hearing officer should preside at the pre-hearing conference which will be held in the Insurance Conference Room, Fourth Floor, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

8. The Superintendent will review all timely submitted written proposals or comments and will hold a public comment hearing beginning at **9:00 a.m. on November 4, 2013**, at the Public Regulation Commission Board Room, 3rd Floor, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

9. Any person with a disability requiring special assistance in order to participate in a hearing should contact Patricia Warwick at 505-827-4297 at least 48 hours prior to the commencement of the hearing.

10. In order to assure that the Superintendent does not initiate, permit, or consider a communication directly or indirectly with a party or his or her representative outside the presence of other parties concerning a pending rulemaking after the record in this case has been closed, the Superintendent should set a date on which it will consider the record to be closed. The Superintendent finds that date shall be the earlier of thirty (30) days following the Public Hearing; that is, **December 4, 2013**, or the date a Final Order is issued in this case. The setting of that record closure date will permit the Superintendent to conduct follow-up discussions with parties who have submitted initial or responsive proposals or comments to the Title Regulations. However, this action should not be interpreted as extending the time during which parties may file proposals or comments or responsive comments, or as allowing the filing of other types of documents in this case.

11. Copies of this NOPR should be sent to all persons on the attached Certificate of Service.

**IT IS THEREFORE ORDERED:**

- A. This NOPR shall constitute due and lawful notice to all potentially interested parties.
- B. Initial, written proposals or comments regarding the Title Regulation must be filed by **Tuesday, October 8,**

2013 and written responsive proposals or comments must be filed by **Friday, October 18, 2013**.

C. A pre-hearing conference shall be held on **Wednesday, October 30, 2013; at 9:00 a.m.** for the purpose of narrowing the issues to be addressed at the public comment hearing and hearing any pending motions that have been filed in the case. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference which will be held in the Insurance Conference Room, Fourth Floor, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

D. A public hearing on the Proposed Rule shall be held beginning at **9:00 a.m.** on **November 4, 2013** at the Public Regulation Commission Board Room, 3rd Floor, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

E. The record in this case will be closed on the earlier of thirty (30) days following the public hearing; that is, **December 4, 2013**, or the date a Final Order is issued in this case.

F. Proposals suggesting changes to the Title Regulations shall state and discuss the particular reasons for the suggested changes; cite to any state or federal law, or other materials, referred to in the proposal or comment; cite to all other sections of the Title Regulations that may be affected in any way by the proposed amendments whether specific language changes to those other sections of the Title Regulations are necessary or not; and **shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the Title Regulations should be in legislative format.** All pleadings, including comments and suggested changes to the Title Regulations, shall bear the caption and docket number contained at the top of this NOPR.

G. Interested persons should contact the Superintendent 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 Patricia Warwick at 505-827-4297 at least 48 hours prior to the commencement of the public hearing in this case.

H. The Superintendent designates Alan Seeley, Chief Actuary, to preside over this matter and to take all action necessary and convenient thereto within the limits of the hearing officer's authority and consistent with applicable procedural rules.

I. In addition, copies of this NOPR shall be e-mailed to all persons on the attached Certificate of Service if their e-mail addresses are known. If their e-mail addresses are not known, then the same

materials shall be mailed to such persons via regular mail.

J. This NOPR, pursuant to NMSA 1978 14.4.7.1.B(1), shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the *New Mexico Register*. Affidavits attesting to the publication of this NOPR as described above shall be filed in this docket.

K. In addition, this NOPR shall be posted on the Superintendent's official Web site.

L. This NOPR is effective immediately.

**ISSUED** under the Seal of the Office of Superintendent of Insurance at Santa Fe, New Mexico, this 1st day of August, 2013.

**OFFICE OF SUPERINTENDENT OF  
INSURANCE**

**JOHN G. FRANCHINI,  
NM Superintendent of Insurance**

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**End of Notices and Proposed  
Rules Section**

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## Adopted Rules

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.7.3 NMAC, Sections 6, 7, 201, 202, 301 - 304, 306, 404, 501, 602, 603, 605, 701, 703, 801, 807 - 810, 901 and 903 - 905, effective 9/1/13.

**20.7.3.6 OBJECTIVE:** To protect the health and welfare of present and future citizens of New Mexico by providing for the prevention and abatement of public health hazards and surface and [ground water] groundwater contamination from on-site liquid waste disposal practices. [20.7.3.6 NMAC - Rp, 20.7.3.6 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.7 DEFINITIONS:** As used in 20.7.3 NMAC.

A. Terms starting with the letter 'A' are defined as follows:

(1) "absorption area" means the area in square feet of infiltrative surface in a soil disposal system designated to receive effluent from a treatment unit;

(2) "absorption bed" means a conventional disposal bed greater than three feet in width and where the minimum horizontal dimension is greater than the vertical dimension;

(3) "advanced treatment" means any process of wastewater treatment that removes a greater amount of contaminants than is accomplished through primary treatment; "advanced treatment" may include physical or chemical processes;

(4) "aggregate" means clean washed gravel or crushed rock, having a hardness value of 3 or more on the Mohs scale of hardness, or a synthetic media reviewed by the wastewater technical advisory committee and approved by the department; shall have a minimum size of 3/4 inch and a maximum size of 2 1/2 inches, no greater than 4% fines by weight or volume and provide no less than 35% void space under field conditions; shall be durable, inert, maintain its integrity, not collapse or disintegrate with time, and not be detrimental to the performance of the system or to groundwater quality;

(5) "alternative disposal" means any approved on-site liquid waste disposal method used in lieu of, including modifications to, a conventional disposal method;

(6) "amendment of permit" means a change that does not affect the permitability of a liquid waste system, including a change of ownership or installer, and is not a "modification" as defined in this section;

(7) "applicant" means the owner

applying for a permit to install, modify or operate an on-site liquid waste system;

(8) "approved" means:

(a) materials, products or procedures that have been reviewed by the wastewater technical advisory committee, if required, and accepted for use by the department;

(b) a liquid waste system that was permitted and installed in compliance with the standards and requirements of this regulation and received department authorization for use;

(c) a person or entity authorized by the department to design, install, modify or maintain liquid waste systems or a person authorized by the department to perform site or liquid waste system evaluations;

(d) materials, products or procedures that are approved or meet minimum standards certified by the international association of plumbing and mechanical officials (IAPMO), as applicable; and

(9) "arroyo" means a dry wash or draw that flows occasionally in response to precipitation, a watercourse (as a creek or stream) in an arid region or a water carved gully or channel.

B. Terms starting with the letter 'B' are defined as follows:

(1) "bedrock" means the more or less solid, undisturbed rock in place either at the surface or beneath surficial deposits of gravel, sand or soil, or a consolidated rock formation of impervious material that may exhibit jointed, fractured or deteriorated characteristics, or the R horizon of a soil profile as defined in the United States department of agriculture (USDA) soil survey manuals;

(2) "bedroom" means any room within a building that is designated as a sleeping room on drawings submitted to the responsible building permitting authority, manufactured housing authority, or in the case of unpermitted systems, to the department;

(3) "biochemical oxygen demand" or "BOD" means the rate at which organisms use the oxygen in water or wastewater while stabilizing decomposable organic matter under aerobic conditions;

(4) "blackwater" means waste from a liquid flushing toilet, urinal, kitchen sinks, dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers;

(5) "body of water" means all constrained water including water situated wholly or partly within or bordering upon New Mexico, whether surface or subsurface, public or private;

(6) "building drain" means that

part of the lowest piping of a drainage system that receives the collective liquid waste discharge from soil, waste and other drainage piping inside a building and conveys it to the building sewer that begins two feet outside the vertical plane of the building wall, residential or commercial unit; and

(7) "building sewer" means that part of the horizontal piping of a drainage system that extends from the end of the building drain located two feet outside the building wall and that receives the liquid waste discharge from the building drain and conveys it to a liquid waste treatment unit or approved point of disposal.

C. Terms starting with the letter 'C' are defined as follows:

(1) "canal" means a man-made ditch or channel that carries water for purposes other than domestic consumption;

(2) "certificate of registration" means a permit to operate an unpermitted liquid waste system installed prior to February 1, 2002 after an evaluation is conducted pursuant to Subsection J of 20.7.3.401 NMAC;

(3) "cesspool" means an excavation or non-water tight unit that receives untreated water-carried liquid waste allowing direct discharge to the soil;

(4) "clay" means:

(a) a soil separate consisting of particles less than 0.002 millimeters in diameter; or

(b) the textural class name of any soil that contains 40% or more clay, less than 45% sand and less than 30% silt;

(5) "clearance" means the vertical thickness of suitable soil between the lowest point of a liquid waste disposal system and the seasonal high [ground water] groundwater table, bedrock or other limiting layer;

(6) "cluster system" means a wastewater system that serves more than one unit and treats 2000 gallons per day or less of wastewater;

(7) "coarse sand" means soil comprised of 25% or more of soil particles 0.5 to 2.0 mm in diameter and less than 50% of any other grade of sand;

(8) "commercial unit" means a structure that is not a residential unit but which has sewage producing fixtures such as sinks, baths, showers, toilets, urinals, dish- and clothes-washers or floor drains for receiving liquid waste including but not limited to uses included in Table 201.1;

(9) "conditional approval" means the approval of an on-site treatment or dispersal product that has been reviewed by the wastewater technical advisory committee and granted permission by the department to

install the product or products on a limited number of sites for the purpose of verifying performance of the product;

(10) "conventional disposal" means a subsurface soil absorption system with gravity distribution of the effluent, with or without a lift station, constructed in accordance with the standards set forth in this regulation, including trenches, absorption beds and seepage pits;

(11) "conventional treatment" means a septic tank where primary treatment occurs; and

(12) "conventional treatment system" means an on-site liquid waste system utilizing both conventional treatment and conventional disposal, including privies, holding tanks and vaults.

D. Terms starting with the letter 'D' are defined as follows:

(1) "degrade a body of water" means to reduce the physical, chemical or biological qualities of a body of water and includes, but is not limited to, the release of material that could result in the exceeding of standards established by 20.6.4 NMAC, Standards for Interstate and Intrastate Surface Waters, by 20.6.2 NMAC, Ground and Surface Water Protection and by 20.7.10 NMAC, Drinking Water;

(2) "department" means the New Mexico environment department;

(3) "design flow" means the flow rate for which an on-site liquid waste system must be designed in order to assure acceptable system performance, assuming the use of conventional plumbing fixtures;

(4) "disinfected" or "disinfection" means the use of any process designed to effectively kill most micro-organisms contained in liquid waste effluent including essentially all pathogenic (disease causing) organisms, as indicated by the reduction of the E. coli concentration to a specific level; these processes include, but are not limited to, suitable oxidizing agents such as chlorine, ozone and ultraviolet light;

(5) "disposal system" means a generally recognized system for disposing of the discharge from a liquid waste treatment unit and includes, but is not limited to, seepage pits, drainfields, evapotranspiration systems, sand mounds and irrigation systems;

(6) "domestic liquid waste" means wastewater that does not exceed 300 mg/l BOD, 300 mg/l TSS, 80 mg/l total nitrogen or 105 mg/l fats, oils and grease; and

(7) "drainage ditch" means an unlined trench dug for the purpose of draining water from the land or for transporting water for use on the land.

E. Terms starting with the letter 'E' are defined as follows:

(1) "edge of a watercourse, canal or arroyo" means that point of maximum curvature at the upper edge of a definite bank

or, if no definite bank exists, the highest point where signs of seasonal high water flow exist;

(2) "effluent" means the discharge from the final treatment unit;

(3) "effluent disposal well" means a prohibited method of disposal consisting of a drilled, driven or bored shaft or dug hole with depth greater than any surface dimension, used for subsurface emplacement of liquid waste, including, but not limited to, abandoned water supply wells, irrigation wells and test holes, but excluding seepage pits used as disposal systems, which conform to the standards in 20.7.3.702 NMAC;

(4) "effluent irrigation" means the use of wastewater effluent to water landscaped areas, fruit trees or nut trees;

(5) "elevated system" means a system installed either partially or completely above grade in a constructed fill area for the purpose of meeting clearance to a limiting layer;

(6) "enclosed system" means a watertight on-site liquid waste system that does not discharge to the soil, including, but not limited to, holding tanks and lined evapotranspiration systems;

(7) "established on-site liquid waste system" means an on-site liquid waste system that has been in active use at any time during the 10 years prior to submission of a permit application and in compliance with any liquid waste disposal regulation in effect at the time of installation, excluding the permitting or registration process, but does not include cesspools installed after September 14, 1973;

(8) "evaluator" or "third party evaluator" means a third party who has the qualifications as set forth in Paragraph (2) of Subsection B of 20.7.3.904 NMAC;

(9) "evapotranspiration system" means a disposal system designed to dispose of effluent through evaporation and plant uptake and transpiration; and

(10) "experimental approval" means the approval of an on-site treatment or dispersal product that has been reviewed by the wastewater technical advisory committee and granted permission by the department to install the product or products on a very limited number of sites for the purpose of verifying performance and obtaining advancement to conditional approval.

F. Terms starting with the letter 'F' are defined as follows:

(1) "failed system" means, without limitation, an on-site liquid waste system that does not operate as permitted, that does not provide a level of treatment at least as effective as that provided by on-site liquid waste systems that meet the requirements of 20.7.3 NMAC or that poses a hazard to public health or degrades a body of water; and

(2) "fixture units" means a quantity

of flow as defined in the New Mexico plumbing code upon which plumbing systems are sized.

G. Terms starting with the letter 'G' are defined as follows:

(1) "gravel" means, for purposes of soils classification, a soil separate consisting of particles greater than 2 mm in diameter;

(2) "graywater" means untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing machines and laundry tubs, but does not include wastewater from kitchen sinks, dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers; and

(3) "[ground water] groundwater" means interstitial water that occurs in saturated earth material and is capable of entering a well in sufficient amounts to be utilized as a water supply.

H. Terms starting with the letter 'H' are defined as follows:

(1) "hazard to public health" means the indicated presence in water or soil of biological, chemical or other contaminants under such conditions that could adversely impact human health, including, but is not limited to, surfacing liquid waste, degradation to a body of water used as, or has the potential to be used as, a domestic water supply source, presence of an open cesspool or tank or exposure of liquid waste or septage in a manner that allows transmission of disease;

(2) "holding tank" means a non-discharging watertight tank designed to receive and retain liquid waste for periodic pumping and disposal off-site;

(3) "homeowner" means a person or persons who owns and occupies, or plans to occupy, a single family home; and

(4) "household hazardous waste" means a wide range of household products that have the characteristics of hazardous waste when discarded, including but not limited to, pesticides and herbicides, oil-based paints and stains, automobile fluids (antifreeze, motor oil, transmission, steering and brake fluids, gasoline), pool chemicals, hobby chemicals and darkroom chemicals.

I. Terms starting with the letter 'I' are defined as follows:

(1) "imminent hazard to public health" means any situation with the potential to immediately and adversely impact or threaten public health or safety;

(2) "impervious formation" means any soil or rock formation with a hydraulic conductivity of  $10^{-7}$  cm/sec or less;

(3) "industrial process wastewater" means non-household wastewater, excepting the following: human excreta; used water from showers, washbasins and dishwashers; and food preparation waste; any wastewater generated in a commercial activity that

contains the materials prohibited by Subsection A of 20.7.3.304 NMAC is industrial process wastewater;

(4) "inspector" means a person employed by the department who is competent in the physical examination and evaluation of on-site liquid waste systems;

(5) "installer" means any person who holds a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division for the construction of on-site liquid waste systems;

(6) "installer specialist" means a person certified by the department pursuant to Subsection E of 20.7.3.904 NMAC;

(7) "interstitial water" means water in spaces between solid earth particles; and

(8) "invert" means the lowest portion of the internal cross section of a pipe or fitting.

J. Terms starting with the letter 'J' are defined as follows: [RESERVED]

K. Terms starting with the letter 'K' are defined as follows: [RESERVED]

L. Terms starting with the letter 'L' are defined as follows:

(1) "lateral" means a secondary water or wastewater pipeline branching directly from a central supply pipeline or manifold leading to an irrigation site;

(2) "limiting layer" means an impervious formation, bedrock or the seasonal high ~~[ground-water]~~ groundwater table;

(3) "liner" means a manufactured or naturally occurring substance that restricts seepage to no more than  $10^{-7}$  cm/sec. over the design service life of the lined unit; manufactured liners must have a minimum single-ply thickness of 20 mils and have no leaks;

(4) "liquid capacity" means the volume of liquid that is contained in a septic tank or treatment unit measured from the invert of the outlet; "liquid capacity" shall be calculated by multiplying the inside length by the inside width by the depth measured from the invert of the outlet to the unit's floor and converting the ~~[resulting product]~~ result of this calculation to gallons;

(5) "liquid waste" means wastewater generated from any residential or commercial unit where the total wastewater received by a liquid waste system is 2000 gallons per day or less; liquid waste includes without limitation human excreta and water carried waste from plumbing fixtures, including, but not limited to, wastes from toilets, sinks, showers, baths, clothes- and dish-washing machines and floor drains; "liquid waste" also includes non-water carried wastes discharged into holding tanks, privies and vaults; specifically excluded from

the definition of "liquid waste" are industrial process wastewaters, roof drainage, mine or mill tailings or wastes;

(6) "liquid waste system" means a liquid waste treatment unit or units and associated disposal systems, or parts thereof, serving a residential or commercial unit; "liquid waste systems" include enclosed systems, holding tanks, vaults and privies but do not include systems or facilities designed to receive or treat mine or mill tailings or wastes;

(7) "liquid waste treatment unit" means a component of the on-site liquid waste system where removal, reduction or alteration of the objectionable contaminants of wastewater is designed to occur; it may include a holding component but does not include soil;

(8) "load" or "loading" means:

(a) in the context of the biological or chemical load received by an on-site liquid waste system, the amount of material applied to an on-site system liquid waste component per unit area or unit volume;

(b) in the context of the structural load applied to an on-site liquid waste structural component, the structural force applied to a liquid waste system component per surface area; and

(9) "lot" means a unified parcel legally recorded or validated by other means, including any contiguous parcel subject to a legally recorded perpetual easement that dedicates the servient parcel for the disposal of liquid waste generated on the dominant parcel.

M. Terms starting with the letter 'M' are defined as follows:

(1) "maintenance contract" means a contract between the system owner and a maintenance service provider in which the maintenance service provider agrees to provide periodic inspections in regards to the operation, maintenance and repair of the system;

(2) "maintenance service provider" means a public entity, company or individual in the business of maintaining liquid waste systems according to manufacturers' specifications;

(3) "manifold" means a part of a water distribution system normally located between the laterals and central supply line; the "manifold" splits the flow into a number of flows, either for distribution or for application to the land;

(4) "may" means discretionary, permissive or allowed; and

(5) "modify" or "modification" of a liquid waste system means:

(a) to change the method of on-site liquid waste treatment or disposal;

(b) to change the design of the on-site liquid waste system;

(c) to increase the design flow or load received by the on-site liquid waste

system above the original design flow or load; or

(d) replace or expand the treatment unit or disposal system.

N. Terms starting with the letter 'N' are defined as follows:

(1) "New Mexico plumbing code" means 14.8.2 NMAC; and

(2) "non-discharging system" means a watertight system that allows no discharge of wastewater except through evaporation, transpiration or pumping, including, but not limited to, lined evaporation systems, lined evapotranspiration systems, holding tanks and vaults.

O. Terms starting with the letter 'O' are defined as follows:

(1) "off-site water" means the domestic water supply for the lot is from:

(a) a private water supply source that is neither within the lot nor outside the lot within one hundred (100) feet of the property line of the lot; or

(b) a public water supply source that is not within the lot;

(2) "on-site" means located on or within a lot;

(3) "on-site liquid waste system" means a liquid waste system located on the lot where the liquid waste is generated;

(4) "on-site water" means the domestic water supply for the lot is from:

(a) a private water supply source that is within the lot or within 100 feet of the property line of the lot; or

(b) a public water supply source that is within the boundaries of the lot; and

(5) "owner" means any person or persons who own:

(a) an on-site liquid waste system or any component thereof; or

(b) any lot upon which any on-site liquid waste system or any component thereof is located; in the case of property sold or purchased on a real estate contract, the "owner" of the property is the buyer; if the property sold or purchased is owned collectively by multiple owners, the "owner" of the common property is the entity or governing body specifically designated in governance documents for the common property.

P. Terms starting with the letter 'P' are defined as follows:

(1) "percolation rate" means the rate of entry of water into soil as determined by a standard soil percolation test at the depth and location of the proposed soil disposal system;

(2) "permanently displayed" means, in context of septic tank legends, embossed into the tank surface or a mechanically attached, non-corrosive plate;

(3) "permit" means a written approval from the department to install, modify, or operate an on-site liquid waste system;

(4) "permittee" means any owner of a permitted on-site liquid waste system;

(5) "person" means any individual, partnership, firm, public or private corporation, association, trust, estate, the state or any political subdivision or agency or any other legal entity or their legal representative, agent or assign;

(6) "primary treatment" means a liquid waste treatment process that takes place in a treatment unit and allows those substances in wastewater that readily settle or float to be separated from the water being treated;

(7) "primary treatment standards" means the primary treated wastewater does not exceed 200 mg/l BOD, 100 mg/l TSS, 60 mg/l total nitrogen or 60 mg/l fats, oils and grease;

(8) "private water supply source" means a water supply source such as a well, spring, infiltration gallery or surface water withdrawal point used to provide water to a water supply system, if such system does not have a least 15 service connections and does not serve an average of 25 individuals at least 60 days out of the year;

(9) "privy" or "outhouse" means a receptacle for non-liquid-carried human excreta allowing direct discharge to the soil;

(10) "professional engineer" or "P.E." means a professional engineer licensed under the New Mexico Engineering and Surveying Practice Act; "professional engineer" includes engineers licensed in any state of the United States for engineering related to a product design and manufacture of proprietary products;

(11) "proprietary system" means a system patented, trademarked or otherwise the intellectual property of manufacturers not in the public domain; and

(12) "public water supply source" means a water supply source such as a well, spring, infiltration gallery or surface water intake structure used to provide water to a public water supply system for human consumption if the system served has at least 15 service connections or regularly services an average of 25 individuals at least 60 days out of the year.

Q. Terms starting with the letter 'Q' are defined as follows:

(1) "qualified homeowner" means a person who is the [handowner-of-record] owner residing at the property who has been provided homeowner installation training materials and who has passed an exam administered by the department.

(2) [RESERVED]

R. Terms starting with the letter 'R' are defined as follows:

(1) "real estate contract" means a contractual document creating rights and obligations between a seller and buyer of real property under which the buyer acquires equitable title to the property at the time the

parties enter into the real estate contract and the seller agrees to transfer legal title to the property to the buyer at some time in the future upon buyer's fulfillment of all terms and conditions of the real estate contract;

(2) "repair" means servicing or replacing, with like kind, mechanical or electrical parts of an approved liquid waste system, pumping of septage or making minor structural corrections to a tank or distribution box;

(3) "residential unit" means a structure that is primarily used for living quarters but does not include facilities listed in Table 201.1; and

(4) "retention/detention area" means an area on a parcel of property specifically designated and designed to capture and hold water resulting from the runoff of precipitation.

S. Terms starting with the letter 'S' are defined as follows:

(1) "sand" means:

(a) a soil separate consisting of individual rock or mineral fragments that range in diameter from 0.05 to 2.0 millimeters; or

(b) the textural class name of any soil that contains 85% or more sand and not more than 10% clay;

(2) "sand-lined trench" means a combined treatment component and disposal system consisting of 24 inches of sand, meeting the latest version of ASTM C33-03 specifications or equivalent, below a low pressure pipe disposal system;

(3) "seasonal high [ground water] groundwater table" means the highest level to which the upper surface of [ground water] groundwater may be expected to rise within 24 consecutive months;

(4) "seasonal high water flow" means the highest level that perennial or intermittent surface waters may be expected to rise as a result of a 25 year, 6-hour storm event;

(5) "secondary treatment" means a reduction of the 5-day biochemical oxygen demand (BOD5) and total suspended solids (TSS) concentrations;

(6) "secretary" means the secretary of environment or a designated representative;

(7) "seepage pit" means a type of absorption system that uses a vertical, underground receptacle so constructed as to allow the disposal of effluent by soil absorption through the sidewalls; the maximum horizontal dimension shall not exceed the vertical dimension;

(8) "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank;

(9) "septic tank" means a liquid waste treatment unit designed to provide primary treatment and anaerobic treatment

prior to disposal;

(10) "setback distance" means the distance measured by a straight horizontal line between the on-site liquid waste system, or portion thereof, and the object being considered;

(11) "shall" means mandatory;

(12) "silt" means:

(a) a soil separate consisting of particles between 0.05 and 0.002 millimeters in diameter; or

(b) the textural class name of any soil that contains 80% or more silt and less than 12% clay;

(13) "soil" means sediment or other unconsolidated accumulations of mineral particles that may or may not contain organic material and that have filtering properties;

(14) "soil replacement" means replacement of existing soil with suitable soil in a new or existing disposal system site to overcome limitations of the existing soil;

(15) "split flow" means a building drain for the conveyance of wastewater that is designed to capture two waste streams, one stream from the toilet and the other stream from all other fixtures including bathtubs, showers washbasins, clothes washing machines, laundry tubs, kitchen sinks and dishwashers, for the purpose of reducing the total nitrogen discharged from the building; a "split flow" system shall consist of a holding tank for the toilet waste only and a disposal system for the remainder of the waste;

(16) "suitable soil" means a soil, whether naturally occurring or introduced, that will treat the primary effluent effectively and act as an effective filter and remove organisms and suspended solids prior to the effluent reaching [ground water] groundwater, bedrock or a limiting layer, and that will provide adequate transmission to prevent a failed system; suitable soils are classified Table 703.1; and

(17) "surface application" means the application of disinfected effluent to the ground surface where access is restricted by artificial or natural conditions.

T. Terms starting with the letter 'T' are defined as follows:

(1) "tertiary treatment" means additional treatment beyond secondary treatment standards, specifically, the reduction in the total nitrogen concentration;

(2) "test hole" means a hole dug in the proposed disposal field area a minimum of seven feet deep or four feet below the bottom of disposal field, whichever is greater, and a minimum of two feet wide; the "test hole" shall be sufficient to examine the soil visually for type, structure, mottling, impervious layers and other soil characteristics, and to determine the seasonal high water table level; a soil boring may be used to determine the soil characteristics and soil depth;

(3) "total design flow" means the sum of design flows for all on-site liquid waste systems and other wastewater discharges on a lot;

(4) "total nitrogen" or "TN" means the combined organic nitrogen, ammonia, nitrite and nitrate contained in the wastewater or effluent;

(5) "total suspended solids" or "TSS" means the measurable component of solid matter suspended in water or wastewater; and

(6) "transfer" means the transfer of equitable or legal title to a property.

U. Terms starting with the letter 'U' are defined as follows: [RESERVED]

V. Terms starting with the letter 'V' are defined as follows:

(1) "vault" means a non-discharging, watertight tank designed to receive and retain non-liquid carried human excreta for periodic pumping and disposal off-site; and

(2) "variance" means an administrative procedure authorizing the issuance of a permit or use of a system that does not meet the specific requirements of 20.7.3 NMAC but which meet the intent of 20.7.3 NMAC.

W. Terms starting with the letter 'W' are defined as follows:

(1) "wastewater" means blackwater and graywater;

(2) "wastewater technical advisory committee" or "WTAC" means the wastewater technical advisory committee created by NMSA 1978 Section 9-7A-15;

(3) "watercourse" means any perennial, intermittent or ephemeral surface water conveyance channel including but not limited to a river, creek, arroyo, canyon, draw, canal or wash, or any other channel having definite banks and beds with visible evidence of the flow of water;

(4) "water(s) of the state" means surface waters of the state as defined by Paragraph (5), Subsection S of 20.6.4.7 NMAC, or its successor definition;

(5) "watertight" means not allowing water to pass in or out or as otherwise determined in 20.7.3 NMAC; and

(6) "wetlands" means those areas that are inundated or saturated by surface water or ~~ground-water~~ groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico; constructed wetlands are not included in this definition.

X. Terms starting with the letter 'X' are defined as follows: [RESERVED]

Y. Terms starting with the letter 'Y' are defined as follows: [RESERVED]

Z. Terms starting with the letter 'Z' are defined as follows: [RESERVED]

[20.7.3.7 NMAC - Rp, 20.7.3.7 NMAC, 9/1/13; A, 9/1/13]

### **20.7.3.201 PROCEDURES; GENERAL REQUIREMENTS:**

A. Every owner shall be responsible for the storing, treating and disposing of liquid waste generated on that property. Every owner shall be responsible for ensuring that the liquid waste system on that property and any excavation related to the liquid waste system do not pose a public safety hazard.

B. No person shall discharge untreated liquid waste except into a permitted and approved enclosed system, a permitted and approved liquid waste treatment unit or a public sewer system, except for the discharge of graywater pursuant to 20.7.3.810 NMAC. All liquid waste systems installed in accordance with a liquid waste permit issued by the department prior to July 1, 2012 shall be deemed to have operational approval. No person shall discharge liquid waste or effluent into a cesspool or effluent disposal well.

C. No person shall discharge effluent from a liquid waste treatment unit except through a permitted and approved liquid waste disposal system or to a permitted public sewer system. No person shall discharge effluent from a liquid waste treatment unit to a cesspool or effluent disposal well.

D. No person shall install, have installed, modify or have modified, own, operate or use an on-site liquid waste system that, by itself or in combination with other on-site liquid waste systems, may cause a hazard to public health or degrade any body of water. All on-site liquid waste systems shall be installed, operated and maintained in accordance with the permit and applicable regulations.

E. All residential and commercial units utilizing an on-site liquid waste system shall connect to a public sewer upon availability and if required in accordance with the local authority that has jurisdiction. A public sewer shall be deemed available when the public sewer has capacity and is located in any thoroughfare, right-of-way or easement abutting the lot on which the residential or commercial unit is located. The on-site liquid waste system shall be properly abandoned in accordance with 20.7.3.307 NMAC within 30 days of connection to the public sewer.

F. The type of on-site liquid waste system shall be determined on the basis of location, lot size, soil and site characteristics. The system, except as otherwise approved, shall consist of a liquid waste treatment unit and associated disposal

system.

G. An on-site liquid waste system shall be located wholly on the same lot, which is the site of the source or sources served by the on-site liquid waste system.

H. A privy may be used for the disposal of human excreta and toilet paper, but not for the disposal of other liquid wastes.

I. On-site liquid waste systems, other than holding tanks, receiving waste from recreational vehicles (RVs) shall provide treatment of the waste to concentrations equal to or less than primary treatment standards as defined in Paragraph (7), Subsection P of 20.7.3.7 NMAC, if necessary, prior to discharging to a conventional disposal system. Monitoring of the effluent may be required in accordance with 20.7.3.901 NMAC. Existing permitted on-site liquid waste systems receiving waste from recreational vehicles (RVs) shall continue to be authorized to operate. Upon modification of these existing systems, the system shall be required to provide the level of treatment of the waste identified above. This subsection shall not apply to homeowners who occasionally empty waste from one personal RV into the on-site liquid waste system serving their residence, provided that the RV is not used as a permanent living quarters.

J. On-site liquid waste systems permitted, but not installed, prior to the effective date of 20.7.3 NMAC shall be installed in accordance with the regulations in effect at the time of the permit issuance, provided that the installation of the system shall be completed within one year of the effective date of 20.7.3 NMAC.

K. Existing on-site liquid waste systems shall meet the regulations in effect at the time of their initial installation or subsequent modification or the current regulation, whichever is less stringent, unless otherwise noted in this regulation.

L. Nothing contained in 20.7.3 NMAC shall be construed to prevent the department from requiring compliance with more stringent requirements than those contained herein, where the department finds that such more stringent requirements are necessary to prevent a hazard to public health or the degradation of a body of water. The following parameters may be considered when determining if a body of water is potentially vulnerable to degradation from liquid waste effluents, and if more stringent requirements may be necessary to prevent such degradation:

(1) a water-table aquifer (includes both unconfined and semi-confined conditions) with a vadose zone thickness of 100 feet or less containing no soil or rock formation that would act as a barrier to saturated or unsaturated wastewater flow;

(2) sites within 1/4 mile of a known

groundwater plume of anthropogenic anoxic or nitrate contamination caused by migration through undisturbed vadose zone, provided that the site overlies the same aquifer;

(3) an aquifer overlain by fractured bedrock;

(4) an aquifer in karst terrain; and

(5) a gaining stream or other body of water adversely affected by nutrients from liquid waste systems.

M. Upon written request, the department shall provide a letter of determination stating whether or not more stringent requirements may be imposed on a lot or parcel of land. This determination shall be valid for one year. The department shall issue the determination letter within 10 working days of receipt of the written request. This letter of determination in no way neither waives or precludes an applicant's regulatory requirements under this part nor predetermines the regulatory requirements of this part when obtaining a permit.

N. The secretary, or a designated representative, upon presentation of proper credentials and with consent or with an administrative search warrant:

(1) shall have the right of entry to any property on which a permitted or unpermitted on-site liquid waste system regulated by 20.7.3 NMAC exists or is required for the limited purpose of inspecting the liquid waste system or to determine compliance with these regulations or permit conditions; failure to provide reasonable access for the purpose of inspecting a liquid waste system or to determine compliance with these regulations or permit conditions shall be cause for revocation or suspension of a permit;

(2) shall have access to and may copy any record required to be established and maintained by these regulations or permit conditions; failure to provide reasonable access to or copies of any record required to be established and maintained by these regulations or permit conditions shall be cause for revocation or suspension of a permit; and

(3) may obtain any samples required to determine compliance with 20.7.3 NMAC or permit conditions; failure to provide reasonable access to facilities for the purpose of obtaining samples shall be cause for revocation or suspension of a permit.

O. Eligibility for permitting under 20.7.3.2 NMAC, which restricts effluent flow to 2000 gallons per day or less, shall be determined as follows:

(1) Wastewater flows from residential sources shall be calculated at 80% of the design flow as determined according to Subsection P of 20.7.3.201 NMAC. Multiple families dwelling unit wastewater flows shall be calculated as the

sum of wastewater flows for each single family unit included.

(2) Wastewater flows from residential and nonresidential sources shall be based on Table 201.1 or generally accepted references, such as the New Mexico plumbing code or the EPA design manuals for on-site wastewater treatment and disposal.

(3) Wastewater flows for residential and nonresidential sources also may be based on:

(a) professional engineering design calculations that bear the seal and signature of a professional engineer licensed in New Mexico, pursuant to the New Mexico engineering and surveying practice act and the rules promulgated under that authority; such calculations shall be reviewed by a department engineer, as appropriate; or

(b) the submittal of actual metered water use or effluent flow meter data; to use actual meter data to establish wastewater flow, the applicant must present at least one year of existing meter data collected within the previous five years; calculate the daily wastewater flow according to the following formula:  $A \div B = Q$ , where **A** = highest quarterly totalized meter reading in gallons for the minimum one year period; **B** = total number of days in highest metered quarter; **Q** = daily wastewater flow in gallons per day.

(c) Meter data or certification by a professional engineer shall not be used to determine wastewater flow on exclusively residential properties consisting of less than five residential units.

(d) If meter data is not representative of the actual wastewater discharge, as determined by the department, the applicant may be required to submit additional meter data or the department may disallow the use of meter data where its use would result in a gross misrepresentation of the wastewater discharge.

(e) The department may require a calibration of the meter used for determining water or wastewater flow and may disallow the use of inaccurate meter data. Applicants may be required to make future records of metered flow available for inspection by the department.

(f) If a permit is issued and there are meter records for any quarter that indicate the daily wastewater flow exceeds 2000 gallons per day, quarterly meter records for the following two quarters shall be submitted to the department within 30 days of becoming available to the permittee. If meter data or other information available to department indicates the average daily wastewater flow has exceeded 2000 gallons per day, the department may void the permit and refer the facility to the ground water quality bureau. The department may require a tamper-proof type meter be installed to verify that future wastewater flows do not exceed 2000 gallons per day.

P. Determining treatment and disposal system design flow:

(1) ~~for~~ For residential sources, the design flow shall be based on the number of bedrooms as follows:

(a) 1 bedroom = 150 gallons per day;

(b) 2 bedrooms = 300 gallons per day;

(c) 3 bedrooms = 375 gallons per day;

(d) 4 bedrooms = 440 gallons per day;

(e) 5 bedrooms = 500 gallons per day; and

(f) each additional bedroom = 50 gallons per day;

(g) design flows for multiple family dwelling units shall be calculated as the sum of design flows for each single family unit included.

(2) Where nonresidential wastewater flow is calculated based upon Table 201.1 or generally accepted references, no design factor is necessary to determine the design flow except as noted in Paragraph (3) below.

(3) For residential and nonresidential facilities with highly variable flows not certified by a professional engineer, a design factor greater than 1.5 may be required to be applied to determine the design flow. Alternatively, flow equalization or other methods of accommodating peak flows may be used with department approval.

(4) Where residential and nonresidential wastewater flow is certified by a professional engineer, no design factor is necessary to determine the design flow, unless deemed appropriate by the professional engineer.

(5) Where residential or nonresidential wastewater flow is determined using existing meter data and calculated in accordance with Subparagraph (b) of Paragraph (3) of Subsection O of 20.7.3.201 NMAC, a design factor of 1.5 shall be applied to the daily average flow to determine design flow. An additional peaking factor may be required in accordance with Paragraph (3) above.

(6) If the design flow could increase significantly beyond existing meter data due to increased occupancy or facility size, the department may require that additional area be available for future expansion of both the treatment and disposal systems.



Table 201.1: Established liquid waste design flow rates

TYPE OF OCCUPANCY	GALLONS PER DAY
1. Airport, Bus Terminal, Train Station	20 per employee 5 per passenger
2. Beauty & Barber Shop	75 per service chair
3. Bowling alleys (snack bar only)	75 per lane
4. Bed and Breakfast	150 first bedroom 100 each additional bedroom
5. Camps: campground with central comfort station with flush toilets, no showers day camps (no meals served) summer and seasonal	35 per person 25 per person 15 per person 50 per person
6. Churches (Sanctuary) with kitchen waste	2 per seat 7 per seat
7. Dance hall	5 per person
8. Doctor and Dentist Office	250 per practitioner, 15 per employee
9. Factories, excluding industrial waste: per 8-hour shift no showers with showers cafeteria, add	25 per employee 35 per employee 5 per employee
10. Food Operations: Restaurants operating 16 hours or less per day Restaurants operating more than 16 hours per day Bar, cocktail lounge add per pool table or video game Carry out only, including caterers add per 8-hour shift Food outlets only add for deli add for bakery add for meat department add per public restroom	40 per seat 60 per seat 20 per seat 15 each 50 per 100 sq ft floor space 20 per employee 10 per 100 sq ft floor space 40 per 100 sq ft floor space 40 per 100 sq ft floor space 75 per 100 sq ft floor space 200
11. Hotels, Motels, Lodges laundries, lounges and restaurants calculated separately	60 per bed
12. Institutions (resident) nursing homes rest homes	75 per person 125 per person 125 per person
13. Laundries self-service (minimum 10 hours/day) commercial	50 per wash cycle per manufacturer's specifications
14. Offices	20 per employee per 8-hour shift
15. Parks: picnic park - toilets only	20 per parking space
16. Recreation Vehicles (RV) Park without water hookup with water and sewer hookup RV dump stations	75 per space 100 per space 50 per RV
17. Schools - staff and office elementary and day care intermediate and high boarding, total waste gym and showers, add with cafeteria, add	20 per person 15 per student 20 per student 100 per person 5 per student 3 per student
18. Service stations and convenience stores uni-sex restrooms	400 per toilet 800 per toilet

19. Stores public restrooms	20 per employee 10 per 100 sq ft. floor
20. Swimming and bathing places, including spas and hot tubs, public	10 per person
21. Theaters, auditoriums Drive-ins	5 per seat 10 per space
22. Veterinary Clinic add add	250 per practitioner 15 per employee 20 per kennel, stall, or cage

Liquid waste generated by the occupancies above, that exceeds the concentrations in the definition of domestic liquid waste, shall require treatment to primary treatment standards as defined in Paragraph (7), Subsection P of 20.7.3.7 NMAC prior to discharging to a conventional disposal system.

Q. The minimum liquid capacity of a septic tank shall be determined as follows:

- (1) for residential units, the liquid capacity shall be based on the number of bedrooms using Table 201.2; and
- (2) for commercial units, the liquid capacity shall be based on the number of plumbing fixture units using Table 201.2; or

(3) if based on flows calculated from Table 201.1 or from estimated design flows pursuant to Paragraphs (2), (3), (4) or (5) of Subsection P of 20.7.3.201 NMAC, the minimum liquid capacity shall be 2.5 times the design flow, whichever is greater.

**Table 201.2: Capacity of septic tanks**

Single family dwellings, number of bedrooms	Other uses maximum fixture units*	Minimum septic tank capacity in gallons served
1	10	750
2 – 3	12	1000
4	15	1200
5 – 6	20	1500
7 – 9	27	2000
	29	2250
	32	2500
	35	2750

\* 100 fixture units or less are equal to 31.1 gallons per fixture unit.

R. Waste from a water softener unit shall comply with the following.

(1) Softener waste may be discharged to a conventional treatment unit. If the waste is not discharged to the treatment unit, the waste may be disposed in accordance with other applicable regulations.

(2) For new construction utilizing an advanced treatment system, the softener waste shall not be discharged to the advanced treatment unit. The softener waste shall bypass the advanced treatment unit and discharge directly to the drainfield or be disposed of in some manner acceptable to the department and meets all other state and local regulations.

(3) If a water softener unit is installed at an existing residential or commercial unit utilizing an advanced treatment unit:

- (a) the current liquid waste permit shall be amended to reflect the installation;
- (b) a written notice shall be submitted to the maintenance service provider of the advanced treatment unit; and
- (c) either a demand-initiated regeneration control device (DIR device) shall be installed or the softener waste shall bypass the advanced treatment unit.

(4) If an advanced treatment unit is to be installed at an existing residential or commercial unit with an existing water softener, the installation shall be done in accordance with the permit.

[20.7.3.201 NMAC - Rp, 20.7.3.201 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.202 PROCEDURES; MODIFICATION OF EXISTING SYSTEMS:**

A. Prior to the modification of an established on-site liquid waste system, a permit application must be submitted in accordance with 20.7.3.401-405 NMAC. The portion of the system requiring modification shall be in accordance with the current version of 20.7.3 NMAC except as noted in Subsections C and D of 20.7.3.202 NMAC below.

B. Replacement components for on-site liquid waste systems shall be of materials approved by the department.

C. On-site liquid waste systems modified after the effective date of this regulation:

(1) shall meet the lot size requirements of the regulations in effect at the time of the initial installation or most recent permitted modification; and

(2) the total lot flow shall be increased only if all current standards and requirements are met pursuant to 20.7.3 NMAC. More stringent requirements may be required pursuant to Subsection L of 20.7.3.201 NMAC.

D. The septic tank need not be replaced as part of the modification if the tank is structurally sound, watertight, constructed of approved materials, is [function] functioning properly and if the existing tank has a liquid capacity within one tank size of the capacity required by Subsection Q of 20.7.3.201 NMAC. In addition, the tank shall be pumped and the inlet and outlet baffles or sanitary tees checked and repaired or replaced, if needed.

E. Upon modification of any part of the system, an approved effluent filter shall be installed in accordance with Subsection H of 20.7.3.502 NMAC and access risers shall be installed over the tank inlet and outlet access openings in accordance with Subsection D of 20.7.3.502 NMAC.

F. Upon the issuance of the permit to modify and the subsequent inspection and approval of the modification, a previously unpermitted system shall be considered permitted and authorized to operate.  
[20.7.3.202 NMAC - Rp, 20.7.3.202 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.301 STANDARDS; LOT SIZE REQUIREMENTS:**

A. The requirements of this section apply to all conventional treatment systems that discharge to the soil. Compliance with the requirements of this section shall be based on the total design flow for the lot. Water conservation devices or demonstrated actual flows shall not be used to reduce the requirements of this section. For the purposes of 20.7.3 NMAC, lot sizes shall be calculated to the nearest hundredth (0.01) acre.

B. The date of record for a lot shall be considered to be either:

(1) the date of legal recording in the county clerk’s office or validation by other means associated with the most recent change in lot size or boundaries; or

(2) for those lots in subdivisions having received final approval from governments having jurisdiction therein prior to February 1, 1990, such date of record shall be two and one-half years from the date of final government approval or July 1, 1992, whichever occurs first.

C. A conventional treatment system shall not be installed on a lot sized smaller than 0.75 acre, where there is not an established on-site liquid waste system, except as otherwise provided in Subsection F of 20.7.3.301 NMAC. The size of a lot shall be the total area of the lot plus or minus the area of any liquid waste disposal easements granted to or by another lot, respectively. The design flow for a conventional treatment system shall not exceed 500 gallons per day per acre. For total design flows that exceed the allowable flow or for lots that do not meet the minimum lot size, the total nitrogen discharged to the lot shall be reduced in accordance with Subsection B of 20.7.3.603 NMAC.

D. On-site liquid waste systems installed prior to the effective date of 20.7.3 NMAC shall meet the lot size requirements of the regulations in effect at the time of their initial installation or if there has been a permitted modification, the regulations in effect at the time of the most recent prior permitted modification.

E. Table 301.1 lists the minimum lot sizes required for typical flow rates for conventional treatment systems for lots with a date of record of February 1, 1990 or later.

**Table 301.1**

TOTAL DESIGN FLOW (gallons per day)	MINIMUM LOT SIZE (acres)
375 or less	0.75
[450] 440	[0.90] 0.88
[600] 500	[1.20] 1.00
750	1.50
1125	2.25
1500	3.00
1875	3.75
2000	4.00

F. The department may issue permits for lots not complying with Subsection C of 20.7.3.301 NMAC for areas the department has identified and mapped where groundwater is not at risk from nitrogen loading from on-site liquid waste systems. The following hydrogeologic conditions may be considered when determining if groundwater is not at risk:

- (1) groundwater does not exist;
- (2) the uppermost groundwater contains a total dissolved solids concentration greater than 10,000 milligrams per liter;
- (3) the uppermost groundwater occurs under confined conditions;
- (4) the uppermost groundwater occurs at a depth between 400 and 600 feet with one or more geologic strata in the vadose zone that may act as a capillary barrier; and
- (5) the uppermost groundwater occurs at a depth greater than 600 feet.

In areas that have not been identified and mapped by the department, the applicant must demonstrate one of the above conditions exists prior to the issuance of a permit.

G. The following Table 301.2 summarizes the minimum lot size requirements, in acres, and permissible design flows in effect prior to February 1, 1990 and is for the purpose of determining the requirements existing at the time of initial installation or most recent permitted modification.

Table 301.2

		RECORD DATE								
		01/01/60 to 11/01/73	11/01/73 to 09/07/79*	09/07/79 to 03/01/80	03/01/80 to 11/09/85	11/09/85 to 02/01/90				
		Minimum Lot Size	Soil Group **	Min. Lot Size	Total Design Flow (gpd)	Min. Lot Size	Total Design Flow (gpd)	Min. Lot Size	Total Design Flow (gpd)	Min. Lot Size
OFF-SITE WATER**	0.25***	A		0.50	0-1000	0.50	0-375	0.33	0-375	0.33
		B		0.75	1000-1500	1.00	376-1000	0.50	376-750	0.50
		C		1.00	1500-2000	1.25	1000-1500	1.00	750-1125	1.00
		D	****				1501-2000	1.25	1126-1500	1.25
									1501-2000	1.75
ON-SITE WATER**	0.50***	A		0.75	0-1000	0.75	0-1000	0.75	0-375	0.75
		B		1.00	1000-1500	1.25	1000-1500	1.25	376-750	1.50
		C		1.25	1500-2000	1.70	1501-2000	1.70	750-1125	2.00
		D	****						1126-1500	2.75
									1501-2000	3.50

(1) \* The maximum total design flow was 1,000 gpd for the lot sizes shown.

(2) \*\* See Subsection H of 20.7.3.301 NMAC.

(3) \*\*\* These requirements applied to lots in subdivisions that were required at the time of subdivision to obtain state health department review and approval.

(4) \*\*\*\* No on-site liquid waste disposal to soil allowed.

(5) NOTE: Roadways were excluded from figuring lot sizes from 11/09/85 to 9/1/13.

H. The following Table 301.3 lists the soil types for lot size determinations for the period November 1, 1973 to September 7, 1979: The minimum lot size required for the location of an individual liquid waste disposal system is determined by the most limiting soil group under which any soil characteristic falls.

Table 301.3

SOIL CHARACTERISTICS	A Slight Limitations	B Slight Limitations	C Moderate Limitations	D Severe Limitations
1. SOIL DEPTH (depth to bedrock, in feet)	More than 6 and	More than 6 and	4 - 6 Or	Less than 4 or
2. PERCOLATION RATE (rate of percolation of water into soil in minutes per inch)	0 - 15 and	16 - 30 and	31 - 60 Or	More than 60 or
3. SEASONAL WATER TABLE (depth to shallowest water table during the year, in feet)	More than 12 and	More than 12 and	4 - 12 Or	Less than 4 or
4. SLOPE (incline of the land surface, in percent)	0 - 8 and	0 - 8 and	8 - 25 Or	More than 25 or

5. FLOODING POTENTIAL (overflow frequency, in years)	None	None	No more than 1 in 25	More than 1 in 25
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I. If the size or boundaries of a lot with an existing on-site liquid waste system are changed so that the total design flow for the lot exceeds the total design flow limitation provided for in Subsection C of 20.7.3.301 NMAC, the permit for the system shall be void.

J. If the size or boundaries of a lot with an existing on-site liquid waste system are changed so that the total design flow for the lot does not exceed the total design flow limitation provided for in Subsection C of 20.7.3.301 NMAC, an amendment to the existing permit shall be submitted.

[20.7.3.301 NMAC - Rp, 20.7.3.301 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.302 STANDARDS; SETBACK REQUIREMENTS:**

A. On-site liquid waste systems shall be located to meet setback distances, in feet, specified in the following Table 302.1. Setback distances apply to any part of the on-site liquid waste system.

**Table 302.1: Minimum setback and clearance requirements**

From:	To:	Building Sewer	Treatment Unit*	Disposal Field	Seepage Pit
Property lines		clear	5 ft.	5 ft.	8 ft.
Building or structure		2 ft.	5 ft.	8 ft.	8 ft.
Distribution box		--	--	5 ft.	5 ft.
Disposal field		--	10 ft.*****	4 ft*****	10 ft.
Seepage pit		--	10 ft.	10 ft.	12 ft.
Drinking water line*****:					
- private		1 ft.	10 ft.	10 ft.	10 ft.
- public		10 ft.	10 ft.	10 ft.	10 ft.
Drinking water source/well:					
- private		50 ft.	50 ft.	100 ft.	100 ft.
- public		50 ft.	100 ft.	200 ft.	200 ft.
Irrigation well		50 ft.	50 ft.	100 ft.	100 ft.
Lined canals		--	10 ft.**	10 ft.**	10 ft.**
Unlined canals, drainage ditches		--	15 ft.**	25 ft.**	25 ft.**
Arroyos		--	15 ft.**	25 ft.**	25 ft.**
Other watercourses,					
Waters of the state		--	50 ft.	100 ft.	100 ft.
Retention/detention area or flood irrigation areas		--	15 ft.	15 ft.	15 ft.
Seasonal high water table, bedrock and other impervious layers***		--	--	4 ft. to bottom of system	4 ft. to bottom of system

- (1) \* Applies to privy pits, enclosed systems, other liquid waste treatment units.
- (2) \*\* Plus depth of channel.
- (3) \*\*\* Unlined privy pits shall provide clearance of at least four feet.
- (4) \*\*\*\* Plus two feet for each additional foot of depth below the invert of the distribution pipe.
- (5) \*\*\*\*\* May be five feet when Schedule 40 PVC/DWV pipe is used.
- (6) \*\*\*\*\*Or applicable plumbing code.

B. Setback distances to watercourses, canals and arroyos shall be measured from the edge of the defined bank to the on-site liquid waste system component. Setback distances to artificially controlled lakes or reservoirs shall be measured from the closest projected shoreline at the maximum controlled water level.

C. Multiple liquid waste systems, each with an actual design flow of 2000 gallons per day (gpd) or less, may be permitted by the department even if they are located on a single lot provided that the disposal systems are set back from each other by a distance equal to the sum of two radii of adjacent circular areas, each circular area representing certain boundaries of a disposal system. The center of each circle is located at a point nearest to the outer boundary of each adjacent liquid waste disposal system. The radius for each circle may be calculated utilizing Table 302.2 below based on the number of bedrooms, or by using the following formula:  $r = \sqrt{(A/\pi)}$  or  $r^2 = A/\pi$ , where:

- (1) "r" means radius of the circular area measured in feet;
- (2) " $\sqrt{\quad}$ " means square root;
- (3) "A" means the area of a circle in square feet, calculated as follows:
  - (a)  $A = (\text{design flow, gpd}) \times (1 \text{ acre}/500 \text{ gpd}) \times (43,560 \text{ square feet}/\text{acre})$ ; or
  - (b)  $A = (\text{design flow, gpd}) \times 87.12$ ; and
- (4)  $\pi$  (pi) = 3.1416.

D. Table 302.2 below provides examples of radii for design flows based on number of bedrooms only. Radii for other design

flows shall be calculated with the formula above. Separation distances to facilities permitted by other entities, such as the ground [waste] water quality bureau, may be considered on a case by case basis.

**Table 302.2: Radii for calculating minimum distance between systems on a large parcel**

No. of bedrooms	Actual flow, gpd	Minimum acreage	Radius of A, feet
1	150	0.75	102.0
2	300	0.75	102.0
3	375	0.75	102.0
4	440	0.88	110.5
5	500	1.0	117.8
6	550	1.1	123.5

E. In order to meet the criteria of this section, the disposal system may be moved to meet the minimum separation distance. This may require the use of an effluent pump system. Alternatively, if the minimum separation distance cannot be achieved, tertiary treatment may be installed. Other methods of providing equal protection will be considered on a case by case basis by the department.

F. Lots with existing liquid waste systems totaling less than 2000 gallons per day may be permitted to add additional liquid waste systems provided the individual systems do not exceed 2000 gallons per day, meet the setback requirements to the existing systems as allowed above and meet lot size requirements in Subsection C of 20.7.3.301 NMAC.

G. If the department discovers that a private drinking water well has been drilled at a location that is not set back from an existing liquid waste system by the distance required in Table 302.1, the department shall:

(1) send a certified letter to the owners of the water well and liquid waste system that identifies the subject water well and liquid waste system, and describes the potential hazards created by insufficient setback;

(2) provide the office of the state engineer with a copy of the letter; and

(3) not administer the water well setback requirements in Table 302.1 pertaining to the subject well provided that the liquid waste system remains in compliance with 20.7.3 NMAC, and is not modified.

[20.7.3.302 NMAC - Rp, 20.7.3.302 NMAC, 9/1/13; A, 9/1/13]

#### **20.7.3.303 STANDARDS; CLEARANCE REQUIREMENTS:**

A. Seasonal high [ground-water] groundwater levels and seasonal high water flows shall be determined by the department either by direct observation, by the presence of mottling in the soil profile, by reliance upon the findings of a qualified professional or upon published scientific material, well records or other sources acceptable to the department. The department may adjust the measured water table to compensate for factors such as season, drought, irrigation or flooding. Compliance with seasonal high [ground-water] groundwater table and seasonal high water flow clearances in this section shall be based on the best-documented evidence available to the department at the time of installation or modification.

B. No conventional on-site liquid waste system shall discharge liquid waste into the soil where the vertical clearance from the bottom of the absorption area to seasonal high [ground-water] groundwater table, impervious formation or other limiting layer is less than four feet of suitable soil. A reduction in this clearance may be allowed with appropriate advanced treatment or alternative disposal.

C. Unlined privy pits shall provide a clearance of no less than four feet of suitable soil from the bottom of the excavation to the seasonal high [ground-water] groundwater table, the seasonal high water flow, impervious formation or other limiting layer.

[20.7.3.303 NMAC - Rp, 20.7.3.303 NMAC, 9/1/13; A, 9/1/13]

#### **20.7.3.304 STANDARDS; PROHIBITIONS:**

A. No person shall introduce into an on-site liquid waste system household hazardous wastes, solvents, fertilizers, livestock wastes, vehicle and equipment wash water or other materials of a composition or concentration not generally considered liquid waste as defined in 20.7.3 NMAC.

B. Liquid waste treatment additives shall not be used as a means to reduce the frequency of proper maintenance and removal of septage from a treatment unit.

C. Effluent shall not be stored with any other source of water, either potable or [not-potable] non-potable.

[20.7.3.304 NMAC - Rp, 20.7.3.304 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.306 STANDARDS; SEPTAGE:** Disposal of septage shall occur only at a permitted facility with the knowledge and consent of the facility owner, and shall not cause a hazard to public health nor degrade a body of water. Transport and disposal of septage shall be in conformance with applicable federal, state and local regulations. Septage pumpers shall keep customer invoices and disposal records for three years and shall, upon written request by the department, make such records available to the department for inspection.

[20.7.3.306 NMAC - Rp, 20.7.3.306 NMAC, 9/1/13; A, 9/1/13]

#### **20.7.3.404 PERMITTING; HAVING RECEIVED EXPERIMENTAL OR CONDITIONAL APPROVAL:**

A. The department may issue a permit, on an individual basis, for the installation of an on-site liquid waste system that has received experimental or conditional approval. The permit applicant must demonstrate that the proposed system, by itself or in combination with other on-site liquid waste systems, will neither cause a hazard to public health nor degrade a body of water and that the proposed system will provide a level of treatment at least as effective as that provided by on-site liquid waste systems, except privies and holding tanks, that meet the requirements of 20.7.3 NMAC.

B. Prior to the approval of a permit for an on-site liquid waste system that has received experimental or conditional approval, the system shall be reviewed by the [wastewater] wastewater technical advisory committee pursuant to 20.7.3.905 NMAC.

C. A field demonstration, which meets the following requirements, shall be required for a system proposed for experimental approval.

(1) Conditions for installation, operation, maintenance and monitoring at the proposed demonstration site shall be reviewed and approved by the department. Systems with experimental approval may only be installed on lots where a conventional system would be allowed.

(2) On-site testing and evaluation, as required by the department and paid for by the permit applicant, shall be performed for a period recommended by the wastewater technical advisory committee and adopted by the department. The results of the evaluation period shall be forwarded to the wastewater technical advisory committee for review and further action.

D. A contingency plan shall be included to provide liquid waste treatment that meets the requirements of 20.7.3 NMAC if the system with experimental or conditional approval fails to meet the requirements of 20.7.3 NMAC.

E. A copy of a signed maintenance contract and sampling contract, if applicable, between the property owners and a certified maintenance service provider shall be attached to the permit application for each system with experimental or conditional approval. The property owner shall have a maintenance contract in effect for the duration of the permit. The property owner shall provide to the department copies of all maintenance contracts required to be in effect within 30 days of contract issuance or renewal.

[20.7.3.404 NMAC - Rp, 20.7.3.404 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.501 DESIGN; LIQUID WASTE TREATMENT UNITS; GENERAL:**

A. Plans for treatment units that have not been previously approved by the department, including septic tanks, shall be submitted to the department for approval and certification. Such plans shall show all dimensions, reinforcement, structural calculations and such other pertinent data as may be required by the department. Plans for advanced treatment units shall be submitted to the department for review by the wastewater technical advisory committee pursuant to 20.7.3.905 NMAC. Plans for advanced treatment units that have not been previously approved by the department shall meet the requirements set forth by the wastewater technical advisory committee. All plans shall be stamped by a professional engineer.

(1) Septic tanks shall be recertified on an annual basis. A recertification fee is required pursuant to 20.7.11.9 NMAC. Failure to recertify shall result in the

suspension of department approval.

(2) Failure of the manufacturer of an advanced treatment unit to comply with the conditions of approval by the department shall result in non-approval or suspension of department approval for the advanced treatment unit.

B. All treatment units and tanks, regardless of material or method of construction and unless otherwise specified in 20.7.3 NMAC, shall:

(1) be designed and constructed to withstand all reasonable lateral earth pressures under saturated soil conditions with the tank empty;

(2) support a minimum live load at the surface of 300 pounds per square foot with three feet of cover unless heavier loads are expected;

(3) not be subject to excessive corrosion or decay;

(4) have the manufacturer's name, New Mexico registration number, year of construction and tank capacity in gallons permanently displayed on the tank above the outlet pipe;

(5) be watertight;

(6) not be constructed or manufactured on site, in the ground, when saturated soil conditions during construction are closer than three inches to the bottom of the excavation;

(7) be protected against flotation under high ~~ground-water~~ groundwater conditions and for units installed in floodplains;

(8) be installed so that they are easily locatable and accessible;

(9) be approved by the international association of plumbing and mechanical officials (IAPMO); or meet IAPMO minimum standards as demonstrated to the department by approved laboratory testing; or meet all requirements of 20.7.3.501 and 502 NMAC as certified by a professional engineer; or be recommended by the wastewater technical advisory committee and approved by the department; and

(10) all access risers shall be attached to the treatment unit with a watertight or water resistant seal.

C. Treatment units may be constructed of the following materials:

(1) precast reinforced concrete;

(2) poured-in-place concrete;

(3) fiberglass;

(4) polyethylene; or

(5) other materials as approved in writing by the department.

D. Metal, wooden, concrete block and homeowner built tanks are prohibited.

E. A secure lid shall consist of one or more of the following:

(1) a padlock;

(2) a twist lock cover requiring special tools for removal;

(3) covers weighing 58 pounds or more, net weight;

(4) a hinge and hasp mechanism that uses stainless steel or other corrosion resistant fasteners to fasten the hinge and hasp to the lid and tank for fiberglass, metal or plastic lids; or

(5) other mechanisms approved by the department.

F. Wherever vehicular traffic is anticipated to cross over the liquid waste treatment unit, pump station or pump chamber, the unit shall be designed by a professional engineer to withstand the anticipated traffic loading.

G. All solid wall pipe connections, fittings and penetrations shall be watertight.

H. Each tank shall be structurally designed to withstand all anticipated earth or other loads. All septic tank covers shall be capable of supporting an earth load of not less than 300 pounds per square foot when the maximum fill coverage does not exceed three feet. All access risers covers shall be capable of supporting a live load of not less than 300 pounds per square foot.

I. Fiberglass or reinforced plastic septic tanks shall be certified to IAPMO standards. Fiberglass or plastic septic tanks shall be installed according to the manufacturer's instructions. A copy of the manufacturer's installation instructions shall be available for inspection by the department at the installation site.

J. Concrete liquid waste treatment units.

(1) Minimum concrete thickness.

(a) walls: two and one-half inches in thickness.

(b) floors: three inches in thickness.

(c) covers: three inches in thickness.

(2) Floors shall be an integral part of the tank.

(3) Where sections are used, tongue and groove joints or keyways shall be used and shall be sealed with an approved sealer and shall be watertight.

(4) Poured-in-place tanks shall be designed and certified by a professional engineer.

(5) All concrete liquid waste treatment units, except those approved for use utilizing concrete meeting type V specifications, shall be protected from corrosion by coating internally with an approved bituminous coating or by other acceptable means. The coating shall cover all exposed concrete and shall extend to at least six inches below the waterline.

(6) Treatment unit construction materials shall meet the following minimum specifications:

(a) concrete strength - 3500 psi @

28 days, density 140 PCF;

(b) cement Portland type II or V per the latest version ASTM specifications;

(c) admixtures per the latest version of ASTM specifications; and

(d) reinforcing per the latest version of ASTM specifications for steel bars, grade 40/60 or equivalent.

(7) Be installed level on undisturbed or compacted soil, 1/4 to 3/4 inch pea gravel or sand.

[20.7.3.501 NMAC - Rp, 20.7.3.501 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.602 DESIGN ; SECONDARY TREATMENT STANDARDS:**

A. Secondary treatment systems shall produce an effluent that meets the following requirements:

(1) 5-day biochemical oxygen demand of 30 mg/l; and

(2) total suspended solids of 30 mg/l.

B. Secondary treatment systems may be installed to overcome site conditions set forth in 20.7.3.605 NMAC.

C. The secondary treatment unit shall be operated in accordance with the manufacturer's specification specifications and department approval conditions.

[20.7.3.602 NMAC - Rp, 20.7.3.602 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.603 DESIGN; TERTIARY TREATMENT STANDARDS:**

A. Tertiary treatment systems shall provide total nitrogen (TN) removal in addition to secondary treatment.

B. For lots that exceed the allowable hydraulic loading pursuant to Subsection C of 20.7.3.301 NMAC, a department approved tertiary treatment unit may be installed. The treatment unit must be capable of removing TN to a concentration equal to or less than the concentration limit calculated pursuant to Subsection C 20.7.3.603 NMAC.

C. Utilizing the standard loading equation, (flow (gpd) X conc. (mg/l) X 8.34 lbs./gal. X 365 days/yr)/ 1,000,000 = lbs./yr/ac., and assuming an average of 60 mg/l of TN in the septic tank effluent and a maximum flow of 500 gpd/ac, the following simplified equation shall be used for determining the required TN concentration allowed for a specific lot size: total nitrogen concentration (in mg/l) = [lot size (in acres) / design flow (in gpd)] x 30,000.

D. The treatment unit shall be operated in accordance with the manufacturer's specification specifications and department approval conditions.

E. Total nitrogen effluent testing, when required pursuant to Subsection C of 20.7.3.901 NMAC, shall meet the concentration limit calculated pursuant to

Subsection C of 20.7.3.603 NMAC. The concentration limit shall be based on a 6 sample rolling average with no single sample exceeding twice the concentration limit.

[20.7.3.603 NMAC - Rp, 20.7.3.603 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.605 DESIGN; MINIMUM REQUIRED TREATMENT LEVELS FOR SITE CONDITIONS:**

A. The required level of treatment shall be based on the most restrictive combination of siting conditions.

B. The following treatment levels are required for the soil types as described in Table 703.1:

(1) type Ia - secondary treatment and disinfection except as noted in Subsection F of 20.7.3.703 NMAC;

(2) type Ib, II, and III - primary treatment; and

(3) type IV - primary treatment with an appropriate disposal method as approved by the department.

C. The following treatment levels are required for the depth of suitable soil:

(1) greater than or equal to four feet of suitable soil - primary treatment;

(2) one to less than four feet of suitable soil - secondary treatment and disinfection; and

(3) no discharge with less than one foot of suitable soil to groundwater, karst or fractured bedrock.

D. The following treatment levels are required for hydraulic loading rates and lot size:

(1) less than or equal to 500 gallons per day per acre with a minimum lot size of 0.75 acre - primary treatment; and

(2) greater than 500 gallons per day per acre or less than 0.75 acre - tertiary treatment;

(3) for lots less than 0.75 acre overlaying anoxic groundwater, secondary treatment shall be required and tertiary treatment may be required; to be exempt from tertiary treatment requirements, the permit applicant shall show by clear and convincing evidence that the discharge of liquid waste shall not degrade a body of water.

E. The following are requirements for a reduction in the disposal field setback distance, as set forth in Table 302.1:

(1) Tertiary treatment and disinfection are required for any reduction in setback distance between 50 feet and less than 100 feet from a private drinking water well located on the subject property.

(2) A variance is required and tertiary treatment and disinfection are required for any reduction in setback distance to:

(a) any private drinking water well

located on the subject property less than 50 feet from the disposal system;

(b) any private drinking water well ~~[no]~~ not located on the subject property; or

(c) any public drinking water well.

F. A non-discharging system may be used in lieu of advanced treatment.

G. A mound system or elevated system in accordance with 20.7.3.806 NMAC may be used to meet clearance requirements or to overcome soil type limitations in lieu of advanced treatment. A sand-lined trench or bottomless sand filter in accordance with 20.7.3.812 NMAC may be used to meet clearance requirements in lieu of advanced treatment.

H. If the existing level of nitrate-N in the groundwater exceeds 5 mg/l, more stringent requirements pursuant to Subsection L of 20.7.3.201 NMAC may be required.

[20.7.3.605 NMAC - Rp, 20.7.3.605 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.701 DESIGN ; CONVENTIONAL DISPOSAL FIELD; DESIGN AND CONSTRUCTION:**

A. Disposal trenches shall conform to the following:

(1) the trench width shall be no less than one foot or no more than three feet;

(2) a minimum of six inches of aggregate shall be placed below the invert of the distribution pipe; and

(3) up to a maximum of three feet of aggregate may be placed below the distribution pipe.

B. Absorption beds shall conform to the following:

(1) a minimum of six inches of aggregate shall be placed below the invert of the distribution pipes; and

(2) up to an additional one foot of aggregate may be placed below the distribution pipes.

C. For conventional disposal trenches and absorption beds, the distribution lines shall have an inside diameter of no less than four inches. Perforated pipe shall have two rows of holes and a minimum perforated area of one and one-half square inches per linear foot. Perforations shall be located not less than 30 degrees or more than 60 degrees from the vertical on either side of the center line of the bottom of the pipe. All plastic pipe and fittings shall conform to the current and appropriate ASTM standards. End caps shall be installed on all distribution lines.

D. Before placing aggregate or drain lines in a prepared excavation, all smeared or compacted surfaces shall be removed from trenches by raking to a depth of one inch and the loose material removed. Aggregate shall be placed in the trench to the depth and grade required. Drain lines



shall be placed on the aggregate. The drain lines shall then be covered with aggregate to a minimum depth of two inches and then covered with untreated building paper, straw or similar porous material to prevent closure of voids with earth backfill. When geotextile fabric is utilized, no aggregate cover of the drainlines is required. No earth backfill shall be placed over the aggregate cover until authorized by the department.

E. The department shall allow drainfields for proprietary systems to be sized in accordance with recommendations by the wastewater technical advisory committee that have been approved by the secretary. The wastewater technical advisory committee shall make its recommendations upon standardized, objective evaluations in accordance with Section 9-7A-15 NMSA 1978. Drainfields for proprietary systems shall not be reduced in size by more than 30% in comparison to a conventional system.

F. Capped inspection ports shall be constructed, at a minimum, of four inch diameter, SDR 35 or better pipe installed at the end of each trench, provide inspection access to the bottom of the trench and terminate at finished ground level. Inspection ports may be installed below grade if located in a protective enclosure and locatable with GPS coordinates or a metal detector.

G. If seepage pits are used in combination with disposal fields, the aggregate in the trenches shall terminate at least 10 feet from the pit excavation and the line extending from such points to the seepage pit shall be constructed of approved pipe with watertight joints.

H. Where two or more drain lines are installed, an approved distribution box of sufficient size to receive lateral lines shall be installed at the head of each disposal field. The inverts of all outlets shall be level and the invert of the inlet shall be at least one inch above the outlets. Distribution boxes shall be designed to ensure equal flow and shall be installed on a level base in natural undisturbed or compacted soil or on a concrete footing. Access to the distribution box shall be provided at the ground surface. However, the installer, after approval by the department, may install in lieu of a distribution box a tee fitting and a distribution header to multiple trenches provided that the tee and header pipe are level.

(1) Concrete distribution boxes shall be coated on the inside with bituminous coating or other approved method acceptable to the department.

(2) All laterals from a distribution box to the disposal field shall be approved pipe with watertight joints. Multiple disposal field laterals, wherever practicable, shall be of uniform length.

(3) Connections between a septic tank and distribution box or drainfield shall be laid with approved pipe with watertight joints on natural ground or compacted fill or appropriate bedding material. Such approved pipe shall be SDR 35 or better.

I. When more than 500 lineal feet of distribution line is required, a low-pressure dosed system shall be used.

J. Disposal fields shall be constructed as follows:

	MINIMUM	MAXIMUM
Number of drain lines	1 per field	
Length of each line	--	160 ft.
Bottom width of trench	12 in.	36 in.
Depth of earth cover of lines	9 in.	--
Grade of lines	level	3 inch/100 ft.
Aggregate under drain lines	6 in.	3 ft.
Aggregate over drain lines with:		
geotextile fabric	0 in.	--
other material	2 in.	--

K. Minimum spacing between trenches or absorption beds shall be four feet plus two feet for each additional foot of depth in excess of one foot below the [invert] bottom of the [distribution] drain line. Distribution drain lines in absorption beds shall not be more than six feet apart on centers and no part of the perimeter of the bed shall be more than three feet from a distribution drain line.

L. When necessary to prevent line slope in excess of three inches per 100 feet, absorption trenches or beds shall be stepped. The lines between each horizontal section shall be made with watertight joints and shall be designed so each horizontal trench or bed shall be utilized to the maximum capacity before the effluent shall pass to the next lower trench or bed. The lines between each horizontal absorption section shall be made with approved watertight joints and installed on natural or unfilled ground.

M. Sites with type Ia or type IV soils may use soil replacement. Sites with failed disposal systems may also use soil replacement. In addition to other design, setback and clearance requirements of 20.7.3 NMAC, the following conditions are required:

(1) The replacement soil shall be type Ib, or a higher level, as described in Table 703.1.

(2) Replacement soil shall be placed to a depth of at least 48 inches below the bottom of each trench.

(3) Replacement soil is placed to a width of at least 24 inches on both sides and ends of each trench.

(4) The application rate used for design of the trench shall be 2.00 square feet per gallon per day.

N. Disposal systems, including both conventional and alternative disposal, shall not be paved over or covered by concrete or any material that can reduce or inhibit any possible evaporation of effluent. Disposal systems shall not be subjected to vehicular traffic of any kind.

[20.7.3.701 NMAC - Rp, 20.7.3.701 NMAC, 9/1/13; A, 9/1/13]

[For specifications for drainfield pipe, see the most recent versions of the ASTM standards: For Type PSM Poly (Vinyl Chloride)(PVC) Sewer Pipe and Fittings, for Poly (Vinyl Chloride) (PVC) Pipe and Fittings, for Corrugated Polyethylene (PE) Tubing and Fittings, and for Smoothwall Polyethylene (PE) Pipe for Use in Drainage and Waste Disposal Absorption Fields]

**20.7.3.703 DESIGN; AREA OF DISPOSAL FIELD AND SEEPAGE PITS:**

A. The minimum required absorption area in a disposal field in square feet, and in seepage pits in square feet of side wall, shall be predicated on the liquid waste design flow rate and shall be determined by utilizing the following Table 703.1 based on the soil classification found in the proposed location of the disposal field.

B. Two test holes, located at opposite ends of the proposed disposal area, may be required for obtaining the soil profile and as provided in Subsection A of 20.7.3.203 NMAC.

C. A detailed soil profile, in accordance with USDA soil classification methodology, shall be submitted with the liquid waste application for each hole, indicating soil horizons, horizon thickness as a function of depth, and soil texture.

D. USDA soil surveys may be used where available to help assess typical soils in the area of the proposed installation.

E. The required absorption area shall be sized on the most restrictive soil horizon located below and within four feet of the bottom of the absorption area.

F. Conventional treatment systems shall not be constructed in type Ia soils where the depth to groundwater is less than 30 feet. For these soils, refer to 20.7.3.605

NMAC.

G. Effluent distribution to type IV soils shall be accomplished with an appropriate disposal method as approved by the department such as timed low pressure dosed distribution or alternating drainfields.

H. The required absorption area shall be calculated by the following formula: **ABSORPTION AREA = Q X AR**, where: Q = the design flow rate in gallons per day; AR = application rate (from Table 703.1)

**Table 703.1: Application Rates by Soil Types for Conventional Treatment Systems**

Soil Type	Soil Texture	Application Rate (AR) (sq. ft./gal/day)
Ia	Coarse Sand <u>or up to 30% gravel</u>	1.25 (See Subsection F of 20.7.3.703 NMAC)
Ib	Medium Sand, Loamy Sand	2.00
II	Sandy Loam, Fine Sand , Loam	2.00
III	Silt, Silt Loam, Clay Loam, Silty Clay Loam, Sandy Clay Loam	2.00
IV	Sandy Clay, Silty Clay, Clay	5.00 (See Subsection G of 20.7.3.703 NMAC)

I. The gravel content of in-place natural soil shall not exceed 30%. The department may identify and map areas of the state where groundwater is not at risk ~~form~~ from microbial contamination from on-site liquid waste disposal systems that discharge into gravel, and where gravel contents greater than 30% may be allowed. The following hydrogeologic conditions may be considered when determining if groundwater is not at risk:

- (1) groundwater does not exist;
- (2) uppermost groundwater contains a total dissolved solids concentration greater than 10,000 milligrams per liter;
- (3) uppermost groundwater occurs under confined conditions; and
- (4) uppermost groundwater occurs at a depth of 30 feet or greater with at least four feet of suitable soil in the vadose zone.

J. Disposal trenches:

- (1) The total absorption area shall be calculated utilizing the total trench bottom and sidewall area below the distribution pipe.
- (2) The total absorption area shall not exceed seven square feet per linear foot of trench.
- (3) A minimum of 300 square feet of absorption area shall be provided for each system exclusive of any hard pan, caliche, rock, clay or other impervious formations.

K. Absorption beds may be used in lieu of trenches. The absorption area of the bed shall be at least 50% greater than the minimum required absorption area for trenches with a minimum of 450 square feet of absorption area. The total absorption area shall be calculated utilizing the total bed bottom and sidewall area.

L. The minimum effective absorption area in any seepage pit shall be calculated as the excavated side wall area below the inlet pipe exclusive of any hardpan, caliche, rock, clay or other impervious formations and may be provided in one or more seepage pits.

M. For secondary and tertiary treated effluent, the minimum calculated absorption area required for conventional treatment may be reduced 30%. In no case shall the maximum reduction for the drainfield absorption area exceed 30%.

[20.7.3.703 NMAC - Rp, 20.7.3.703 NMAC, 9/1/13; A, 9/1/13]

#### **20.7.3.801 PRIVIES AND VAULTS:**

A. A privy may be used to dispose of non-liquid-carried human excreta directly to the soil. A vault may be used to dispose of non-liquid-carried human excreta for subsequent pumping and disposal in accordance with 20.7.3.306 NMAC. In addition to all setback and clearance requirements in 20.7.3 NMAC, the following conditions are required.

- (1) The privy or vault is constructed to prevent access by flies or vermin.
- (2) The privy or vault is located to prevent flooding.
- (3) There are sufficient replacement locations for two additional privy pits. Vaults do not require replacement locations.
- (4) Privy pits shall be filled with clean earth when excreta accumulate to within one foot of the ground surface.

B. No person shall install or have installed a privy or vault unless that person obtains a permit issued by the department prior to construction of such installation. At the time of application, the total number of privies or vaults and their replacement locations, if

required, shall be indicated. When a privy pit is filled, the privy may be moved to a previously identified replacement location on the same lot without modifying or amending the permit.  
[20.7.3.801 NMAC - Rp, 20.7.3.802 NMAC, 9/1/13; A, 9/1/13]

### **20.7.3.807 LOW PRESSURE DISPOSAL SYSTEMS:**

A. Low pressure dosed (LPD) disposal systems are used to achieve uniform distribution of wastewater throughout the entire disposal system. Effluent is pumped under low pressure through solid pipe into perforated lateral lines installed within a disposal system.

(1) Low pressure dosed disposal systems may be used with any on-site liquid waste system including conventional treatment systems, gray water systems and advanced treatment systems.

(2) Low pressure dosed disposal systems may be used with any disposal system including trenches, beds, mounds, gravelless systems and evapotranspiration systems.

(3) Lift stations are not classified as low pressure dosed disposal systems.

(4) Low pressure dosed disposal systems may use a timer to equalize the flow over a 24-hour period. LPD disposal systems may also be designed to rotate between separate disposal areas by using rotator valves.

(5) All pumps shall be rated by the manufacturer for pumping sewage or effluent.

(6) A single pump may be used for design flows equal to or less than 1,000 gpd. Dual alternating pumps are required for design flows over 1,000 gpd.

(7) Design of the system shall include:

- (a) design flow;
- (b) except for mound systems, soil absorption area sized according to the effluent loading rates found in 20.7.3.703 NMAC;
- (c) total length of header and lateral pipes;
- (d) diameter of perforated lateral lines used;
- (e) size and spacing of holes or emitters; and
- (f) pump performance sizing with allowances for head and friction losses at rated flows in gallons per minute.

(8) A ball valve shall be located vertically at the end of each lateral line for inspection and flushing except for proprietary drip irrigation systems.

B. A low pressure pipe (LPP) disposal system is a pressurized distribution system placed in shallow, narrow trenches. The effluent discharged to a LPP system must meet, at a minimum,

primary treatment standards.

(1) The low pressure pipe system shall be sized as follows.

(a) The required absorption area shall be sized in accordance with Subsection H of 20.7.3.703 NMAC.

(b) A sizing credit of five square feet per linear foot of lateral pipe shall be applied to the total required absorption area.

(c) Each individual lateral shall not exceed 75 feet in length from the feed point unless the design is such that the discharge rate between any two points in the system does not exceed 10%.

(2) Design for LPP systems shall conform to the following.

(a) Trenches shall be 12 inches to 18 inches wide and 12 inches deep.

(b) When aggregate is used, the lateral pipe shall be embedded at or above the center of the column of aggregate.

(c) The aggregate shall be covered with geotextile material to prevent soil intrusion.

(d) If a proprietary drainfield product other than aggregate is used, the distribution pipe shall be placed so as to prevent soil intrusion into the pipe.

(e) A minimum of four inches and a maximum of 18 inches of soil cover over the trench is required.

(f) Lateral lines shall be placed parallel to the natural contours of the site.

(g) Provisions shall be made for the prevention of siphoning back to the pump tank on upgrade systems and the prevention of draining of the tank on downgrade or flat systems.

(h) All requirements for conventional disposal systems shall be met, including but not limited to, setback and clearance requirements, lot size, design flow calculations, septic tank sizing, prohibitions, wastewater characteristics and advanced treatment requirements.

(i) Runoff shall be diverted away from the system to avoid oversaturation, where possible.

(j) A vegetative cover shall be maintained over the disposal area.

(3) Materials and equipment for LPP systems shall conform to the following.

(a) All treatment units and pump tanks shall meet the structural requirements of 20.7.3.501 NMAC.

(b) The pump tank shall be a single compartment with a 500 gallon minimum useful volume and allowance to be made for tank volume between the pump intake and tank floor. For septic tank effluent, a separate pump tank, in addition to the septic tank, is required.

(c) Effluent type pumps are required on all systems.

(d) A system design shall demonstrate that the system comes to the design pressure during every pumping cycle.

(e) An alternating valve or solenoid valve system is required to feed separate laterals with elevation differences resulting in 23 feet (10 psi) or greater head differentials. Manual or automatic flushing valves with turn-ups are required on distal ends of all laterals.

(f) In areas of freezing conditions, provisions for the draining of the headers must be made, such as vacuum breakers or vent holes at the system high points.

(g) Pipe shall be rated at 160 psi minimum, ASTM compression drainpipe, schedule 40 or better.

(h) The manifold pipe shall be sized appropriately for system size and configuration. The lateral pipe shall be one inch to two inches in diameter.

(i) The orifice size shall be 5/32 inch to 1/4 inch for septic effluent and 1/8 inch to 1/4 inch for secondary and tertiary treated effluent.

(j) The lateral pipe shall be installed with orifices facing upward.

(4) A maintenance contract shall be required on all LPP systems. Maintenance is to include pump inspection and cleaning, float operation (if applicable), lateral flushing annually at a minimum and septic tank and pump tank pumping as needed.

C. Designs that do not conform to the design parameters specified in Subsections A and B above must be accompanied by documentation justifying the design submitted, including proprietary software input and output reports, and will be considered on a case-by-case basis.

[20.7.3.807 NMAC - Rp, 20.7.3.808 NMAC, 9/1/13; A, 9/1/13]

### **20.7.3.808 HOLDING TANK REQUIREMENTS:**

A. The installation of holding tanks for the disposal of liquid wastes shall be authorized on a temporary basis only and only for residential units where conventional or alternative liquid waste treatment systems cannot be installed, except where noted in Subsection E below.

B. The installation of holding tanks shall not be authorized for commercial units except where noted in Subsection E below.

C. Holding tanks shall not be installed to serve any design flow greater than 375 gallons per day, except for the direct collection of RV waste or to replace an existing holding tank. Total design flow on any property served by a holding tank shall not exceed 375 gallons per day except for the direct collection of RV waste.

D. The installation of holding tanks shall be authorized for no more than one year from the date of installation for units occupied more than 120 days per calendar year.

E. The installation of

holding tanks shall be authorized for permanent use only for the following:

(1) residential units, with a design flow rate of 375 gpd or less, occupied 120 days or less per calendar year;

(2) residential units utilizing the holding tank only for the discharge of toilet waste in conjunction with a conventional treatment system for the remainder of the wastewater;

(3) non-residential, non-commercial units, such as guard shacks, toll booths, etc., with a design flow rate of 100 gpd or less; and

(4) the direct collection of RV waste and portable toilet waste for disposal in accordance with 20.7.3.306 NMAC.

F. Holding tanks shall be constructed of the same materials, by the same procedures and to the same standards as described in 20.7.3.501-502 NMAC except that they shall have no discharge outlet.

G. All holding tank installations shall be tested on-site for water tightness.

H. The minimum size of a holding tank shall be 1000 gallons or four times the design flow, whichever is greater.

I. Holding tanks shall be located in an area readily accessible to a pump vehicle under all weather conditions and where accidental spillage during pumping will not create a nuisance or a hazard to public health.

J. Holding tanks shall be protected against flotation under high [~~ground-water~~] groundwater conditions by weight of tank (ballasting), earth anchors or by surface or shallow installation. Holding tanks shall be protected from freezing.

K. Holding tanks shall be equipped with a visible and audible high water alarm system placed in a conspicuous location approved by the department. The alarm shall be set to activate at 80% of the tank capacity. It shall be a violation of these regulations to tamper with or disconnect the alarm system.

L. The owner of a holding tank shall have the tank pumped to prevent discharge from the tank and the liquid waste (septage) properly disposed of in compliance with all applicable laws and regulations. Owners of holding tanks shall maintain records demonstrating pumping and proper disposal of septage from the units to prevent discharge. Copies of pumping and disposal manifests shall be retained by the owner for at least seven years and shall be made available to the department for inspection on request. The records shall be:

(1) kept on a form provided by the department if requested;

(2) accompanied by such other documentation as the department may reasonably require;

(3) signed by the lot owner or an authorized representative;

(4) submitted on a semi-annual basis, or a schedule otherwise determined by the department, to the department field office having jurisdiction, and

(5) included in any transfer inspection report or unpermitted system inspection report.

M. No person shall install, operate, modify or maintain a holding tank that allows discharge to the soil or to waters of the state.

N. The department may perform site inspections periodically to ensure that a holding tank does not discharge.

O. All units utilizing a holding tank shall connect to a public sewer upon availability and in accordance with the local authority that has jurisdiction. A public sewer shall be deemed available when the public sewer is located in any thoroughfare, right-of-way or easement abutting the lot on which the unit is located. The holding tank shall be properly abandoned in accordance with 20.7.3.307 NMAC within 30 days of connection to the public sewer. [20.7.3.808 NMAC - Rp, 20.7.3.809 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.809 GRAYWATER SYSTEMS:** Graywater systems not meeting the requirements of 20.7.3.810 NMAC shall meet the following requirements.

A. The installation of separate graywater systems shall be authorized for residential units and shall be located on the lot served. The capacity of the on-site liquid waste system shall not be decreased or otherwise affected by the existence or proposed installation of a graywater system servicing the lot.

B. All information required in 20.7.3.402 NMAC for the issuance of a permit shall be required.

C. Design flows for graywater systems shall be calculated by the following:

(1) 20% of the liquid waste design flow for the segregation of laundry waste; and

(2) 33% of the liquid waste design flow for the segregation of the bathroom (showers, tubs and wash basin) waste.

D. For graywater systems on lots where the residential unit is served by a sewerage system, the minimum lot size set forth in 20.7.3.301 NMAC shall not be required.

E. Clearance requirements for graywater systems shall meet the requirements of 20.7.3.303 NMAC.

F. Setback requirements for graywater systems shall meet the requirements of 20.7.3.302 NMAC except for the following:

(1) property lines, two feet for

disposal area;

(2) building or structure, two feet for disposal area; and

(3) building or structure, zero feet for above ground tanks.

G. A treatment unit shall be required for all graywater systems. If a tank is utilized as the treatment unit:

(1) the tank may be a single compartment;

(2) the tank shall be sized to accommodate one day design flow; and

(3) access to the tank shall be provided by a tamper resistant lid installed to grade.

H. Graywater should be utilized within 24 hours of collection unless additional treatment is provided.

I. Tanks installed below ground shall meet the requirements of 20.7.3.501-502 NMAC except for the requirements in Subsection G of this section. Tanks shall be protected against possible floatation.

J. Above ground tanks shall be constructed of solid, durable materials, not subject to corrosion or decay and shall be approved by the department. Above ground tanks shall be set on a three inch minimum concrete pad. Metal tanks shall not be authorized.

K. All tanks shall have an overflow drain with a permanent connection to the building drain or building sewer. The tank shall be protected against sewer line backflow by a backwater valve.

L. Each tank shall be vented as required by the New Mexico plumbing code.

M. Each tank shall have its rated liquid capacity permanently marked on the unit. In addition, a sign "GRAYWATER SYSTEM, DANGER – UNSAFE WATER" shall be permanently marked on the tank.

N. The disposal system shall be constructed in accordance with 20.7.3.804 NMAC.

O. The graywater system shall have no direct or indirect cross connection with potable water systems.

P. Graywater use for purposes other than irrigation or toilet flushing is prohibited. Irrigation of edible food crops except for fruit trees or nut trees is prohibited.

[20.7.3.809 NMAC - Rp, 20.7.3.811 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.810 GRAYWATER DISCHARGES:** Graywater discharge of less than 250 gallons per day of private residential graywater originating from a residence for the resident's household flower gardening, composting or landscaping irrigation shall be allowed if:

A. a constructed graywater distribution system provides for overflow

into the sewer system or on-site wastewater treatment and disposal system;

B. a graywater storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

C. a graywater system is sited outside of a floodway;

D. graywater is vertically separated at least five feet above the [ground water] groundwater table;

E. graywater pressure piping is clearly identified as a non-potable water conduit;

F. graywater is used on the site where it is generated and does not run off the property lines;

G. graywater is discharged in a manner that minimizes the potential for contact with people or domestic pets;

H. ponding is prohibited, discharge of graywater is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

I. graywater is not sprayed;

J. graywater is not discharged to a watercourse;

K. graywater use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;

L. graywater is not stored longer than 24 hours before being discharged;

M. graywater use for purposes other than irrigation or composting is prohibited, unless a permit for such use is issued by the department;

N. graywater is not used to irrigate food plants except for fruit and nut trees;

O. graywater is discharged to a mulched surface area or to an underground irrigation system;

P. graywater is not discharged closer than 100 feet to a watercourse or private domestic well, or closer than 200 feet to a public water supply well;

Q. graywater does not create a public nuisance;

R. for residential units using an on-site liquid waste system for blackwater treatment and disposal, the use of a graywater system does not change the design, capacity or absorption area requirements for the on-site liquid waste system at the residential unit, and the on-site liquid waste system is designed and sized to handle the combined blackwater and graywater flow if the graywater system fails or is not fully used; and

S. graywater does not contain hazardous chemicals derived from activities such as cleaning car parts, washing

greasy or oily rags or disposing of waste solutions from home photo labs or similar hobbyist or home occupational activities.

[20.7.3.810 NMAC - Rp, 20.7.3.810 NMAC, 9/1/13; A, 9/1/13]

#### 20.7.3.901 MONITORING:

A. As a condition to any permit, the owner of an on-site liquid waste system shall allow department personnel or maintenance service provider personnel right of entry to the property at reasonable times to allow for maintenance, system monitoring, effluent sampling or evaluating the general state of repair or function of the system.

B. Advanced treatment liquid waste systems require maintenance and monitoring. These systems shall be maintained and monitored, at a minimum, semi-annually or more as per [manufacturers<sup>2</sup>] manufacturer's recommendations.

(1) Monitoring will include all the following parameters:

(a) dissolved oxygen (DO);

(b) temperature;

(c) pH;

(d) sludge depth; and

(e) other parameters recommended by the [manufacturers] manufacturer.

(2) Parameters should be measured at locations within the treatment unit that will demonstrate the effectiveness of treatment.

(3) Monitoring shall be completed utilizing field instruments including a DO meter, thermometer, pH meter, sludge sampler or other approved instruments.

(4) Parameters and maintenance requirements shall be included in the permit application design statement and be consistent with the [manufacturers<sup>2</sup>] manufacturer's recommendations for proper operation.

(5) Field instruments shall be calibrated as per [manufacturers<sup>2</sup>] manufacturer's recommendations and a log maintained on the operation and calibration of each instrument. Logs shall be made available to the department upon request.

C. Effluent sampling shall be required for on-site liquid waste systems that do not conform to [manufacturers<sup>2</sup>] manufacturer's guidelines for field parameters pursuant to Subsection B of 20.7.3.901 NMAC, for systems where the [manufacturers-have] manufacturer has not established guidelines for field parameters or for systems that the department has determined are not operating properly. Sampling shall be conducted annually or as otherwise required by the department.

(1) On-site liquid waste systems that require primary treatment levels be achieved may be sampled and analyzed or monitored as specified in the permit.

(2) On-site liquid waste systems

that require secondary treatment levels be achieved may be sampled and analyzed only for 5-day BOD (BOD5) or monitored as specified in the permit. Chemical oxygen demand (COD) may be substituted for BOD5 with a calibration curve acceptable to the department.

(3) On-site liquid waste systems that require tertiary treatment levels be achieved may be sampled and analyzed only for total nitrogen or monitored as specified in the permit.

(4) On-site liquid waste systems that require disinfection may be sampled and analyzed only for E. coli or monitored as specified in the permit. In addition:

(a) when chlorine is used for disinfection, the total chlorine residual, at all times, shall be equal to or greater than 1.0 mg/l after 30 minutes detention time at peak flows; and

(b) alternative disinfection methods, such as ultraviolet light, ozone or other methods, may be used.

D. All sampling, maintenance, monitoring and analysis shall be performed by certified personnel in accordance with the most current edition of *standard methods for the examination of water and wastewater* or other methods, including field instruments, approved by the department and recommended by the manufacturer.

E. Monitoring and sampling shall occur between the hours of 7:00 am and 7:00 pm.

F. Monitoring reports, sampling records and maintenance reports/logs shall be submitted to the local field office within 30 days of the maintenance, monitoring or required sampling event.

G. All monitoring or sampling results exceeding the permit limits shall be reported to the local field office within five working days.

H. If any two consecutive samples exceed the permitted treatment limit, the system design and operation shall be evaluated by a professional engineer or a maintenance service provider for conformance with permitting conditions and shall be adjusted to bring the effluent quality into compliance. The system shall be resampled no later than 30 days from the evaluation and results submitted to the department within five working days of analysis.

I. If the resample required in Subsection H above exceeds the permitted treatment limit, the treatment system shall be subject to review and re-evaluation with regard to operation and maintenance. A department approved contingency plan, including more training for the maintenance service provider or replacement with a more experienced operator, may be implemented.

J. The following shall be

considered as violations of the monitoring requirements of the permit.

(1) Failure to collect, analyze and report maintenance, monitoring or sampling results.

(2) The submission, by the owner or maintenance entity of an advanced treatment system or agent or employee thereof, of misleading or inaccurate information to the department, through neglect.

(3) The submission of fraudulent data including the following:

(a) apparent measurement results for which no measurement or test results were actually made as determined by the absence of the supporting records that are usually made;

(b) measurements or test results obtained by deliberately and knowingly making measurements or collecting samples at places and times other than as specified in the permit or 20.7.3 NMAC; and

(c) test results obtained through use of unapproved and erroneous sampling, preservation, storage or analysis procedures. [20.7.3.901 NMAC - Rp, 20.7.3.901 NMAC, 9/1/13; A, 9/1/13]

### **20.7.3.903 MAINTENANCE SERVICE PROVIDERS (MSP) FOR CONVENTIONAL AND ADVANCED ON-SITE LIQUID WASTE SYSTEMS:**

A. Maintenance service providers (MSP) shall at a minimum:

(1) inspect, operate and maintain the system in accordance with the manufacturer's specification and permit requirements; and

(2) submit pumping and inspection records as requested by [to] the department.

B. The MSP personnel shall possess a valid and appropriate CID license when required for the specific activities performed and have at least one of the certifications listed below:

(1) certification by the manufacturer for the proprietary unit being maintained, or

(2) operator certification for small advanced wastewater systems, or higher, from the state of New Mexico; or

(3) certification at an acceptable level as a wastewater operator from another state; or

(4) certification based on other credentials as approved by the department.

C. The MSP personnel shall have the ability to sample the unit in accordance with approved sampling methods under this part.

D. The MSP shall be able to respond to emergency situations within 48 hours of being notified.

E. A public MSP shall adopt an ordinance, bylaw or rule, as appropriate, approved by the department, detailing the terms and conditions of service.

F. A private MSP shall use a contract for service that contains, at least, minimum standards approved by the department.

G. The MSP shall have a quality assurance/quality control plan acceptable to the department and shall provide a copy to the department upon request.

H. The MSP shall notify the department within five working days of any failed system.

I. The MSP must properly maintain and sample all systems for which they have an active maintenance or sampling contract.

[20.7.3.903 NMAC - Rp, 20.7.3.903 NMAC, 9/1/13; A, 9/1/13]

### **20.7.3.904 REQUIREMENTS FOR QUALIFICATION:**

A. Qualified homeowner.

(1) A homeowner must become qualified to install an on-site liquid waste system by passing an exam administered by the department.

(2) Homeowner training materials and opportunities for exams, by appointment, shall be available at all department field offices.

(3) A qualified homeowner may apply for a permit to install or modify a conventional on-site liquid waste treatment and disposal system serving the qualified homeowner's personal residence in accordance with Subsection C of 20.7.3.401 NMAC.

(4) A qualified homeowner shall not install or modify an on-site liquid waste system serving a rental unit, or other property that is not the qualified homeowner's personal residence.

(5) A homeowner qualification shall be valid for one year from the date of issuance of qualification; the department may extend the qualification beyond one year for good cause shown.

(6) A qualified homeowner may install no more than one liquid waste system during a twelve month period.

(7) A qualified homeowner who self-installs a system shall not compensate any person to perform any phase of the system construction, unless that person holds a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division.

B. Third party evaluators.

(1) Evaluations of liquid waste systems prior to property transfers are required by Subsection E of 20.7.3.902 NMAC. The department shall inspect unpermitted liquid waste systems installed after February 1, 2002. Third party evaluators shall evaluate permitted liquid waste systems and unpermitted systems installed prior to February 1, 2002.

(2) Qualification as a third party evaluator shall be based on one of the following:

(a) a valid and appropriate classification of licensure by the construction industries division of the regulation and licensing department;

(b) licensure as a professional engineer;

(c) accreditation in on-site wastewater inspection by the national sanitation foundation (NSF);

(d) certification by the national environmental health association (NEHA) as an installer of on-site wastewater treatment systems;

(e) certification as a registered environmental health specialist (REHS) or a registered sanitarian (RS); or

(f) demonstration of a similar accreditation or certification or a combination of training and experience as approved by the department.

(3) Inspection of advanced wastewater treatment systems shall be performed only by persons qualified pursuant to Subsection C of 20.7.3.904 NMAC.

C. Maintenance service provider of an advanced treatment system.

(1) Maintenance service providers shall comply with 20.7.3.903 NMAC.

(2) In order to obtain approval by the department, and in addition to receiving a recommendation for approval by the wastewater technical advisory committee, manufacturers or their authorized trainers of advanced treatment systems shall provide a written training and certification program, for approval by the department, for installers and maintenance service providers of their systems. Installers and maintenance service providers of advanced treatment systems shall receive the training approved by the department at least once per year. Department representatives may audit training classes provided by the manufacturers for the purpose of evaluating the training provided.

D. Septage pumpers.

(1) Septage pumpers shall demonstrate familiarity with applicable regulations and demonstrate competence in locating and exposing septic tanks, measuring septic sludge and scum levels, the complete pumping of septic tank sludge, maintenance of pumping equipment in a sanitary condition, prevention of pathogen transmission and preparation of an appropriate safety plan for normal operations.

(2) Septage pumpers shall maintain his or her equipment to ensure no sewage spills occur during transport or storage and that his or her employees or the public are not subjected to a hazard to public health.

(3) Septage pumpers shall have a

written contingency plan for spill abatement and shall have the equipment and supplies needed to abate spills onsite during each pumping operation.

(4) Septage pumpers shall notify the department of the facilities they use for the septage disposal and shall provide the department with copies of any permits or licenses issued by the owner of the disposal facility to the septage pumper.

E. Installer specialist.

(1) Any person who possesses all of the following minimum qualifications may apply to the department for certification as an installer specialist:

(a) a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division for the construction of on-site liquid waste systems;

(b) three years of professional experience installing on-site liquid waste systems in New Mexico; or the installation or repair of either 100 on-site liquid waste systems in New Mexico in compliance with liquid waste permits approved by the department or Bernalillo county; or 50 on-site liquid waste systems in New Mexico in compliance with liquid waste permits approved by the department or by Bernalillo county, plus certification as an installer of on-site wastewater systems by a national industry or trade organization;

(c) 16 hours of training credits approved by the department completed during the previous three calendar years;

(d) successful completion of a 20.7.3 NMAC training class and examination provided by the department during the previous twelve months;

(e) no compliance orders issued to the applicant within the past three years for violation of any provision of 20.7.3 NMAC, except for compliance orders that are presently under appeal or that have been overturned on appeal or withdrawn by the department; and

(f) no criminal convictions pursuant to ~~[NNSA]~~ NMSA 1978, Section 74-1-10 within the past five years for violation of any provision of 20.7.3 NMAC.

(2) Application for certification as an installer specialist shall be made in writing on a form provided by the department and shall include documentation of qualification requirements in Subparagraph (a), (b) and (c) of Paragraph (1) of Subsection E of 20.7.3.904 NMAC.

(3) The department shall, within 15 working days of receipt of a complete application, notify the applicant in writing of approval or disapproval of the application.

(4) Department disapproval of an application may be appealed pursuant to the adjudicatory procedures in 20.1.5 NMAC.

(5) Installer specialist certification

shall be valid for no longer than three years, expiring on January 31 of the applicable year.

(6) Installer ~~[specialist]~~ specialists shall be recertified upon submission to the department, no later than January 31 of each applicable year, of documentation that the installer specialist has received 16 hours of approved training credits completed during the previous three calendar years.

(7) The department shall maintain on its internet website a list of training curricula that have been approved for qualification and recertification as installer specialist.

(8) The department shall accept registrations for a 20.7.3 NMAC training class and exam no less frequently than quarterly within each department district.

(9) The department shall maintain on its internet website a list of certified installer ~~[specialist]~~ specialists, along with a description of the minimum qualification requirements for certification.

(10) Subsection E of 20.7.3.904 NMAC shall cease to be effective three years after September 1, 2013 unless the department has provided prior to that date a written report to the New Mexico environmental improvement board documenting or stating successful implementation of the installer specialist certification and recommending ~~[the]~~ that Subsection E of 20.7.3.904 NMAC continue to be effective.

F. S u s p e n s i o n s , [revocation] revocations and denials.

(1) The department may deny a qualification if it determines that an applicant does not meet all eligibility requirements set forth above.

(2) The department, at any time, may suspend or revoke a qualification for cause to include fraud, misrepresentation, failure to provide required documentation, failure to provide service in accordance with the qualification or failure to comply with 20.7.3 NMAC. Suspension or revocation shall be by issuance of an order by the department.

(3) Any person who desires to appeal a denial, suspension, revocation or disqualification may appeal to the secretary. An appeal is initiated by submitting a request for a hearing. The request for a hearing must be in writing and made no later than 30 days after notice of the action is served. Upon such request, the secretary shall conduct a hearing pursuant to the adjudicatory procedures in 20.1.5 NMAC.

[20.7.3.904 NMAC - Rp, 20.7.3.904 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.905 [WASTERWATER] WASTEWATER TECHNICAL ADVISORY COMMITTEE:** Technical product review and approval shall be in accordance with 9-7A-15 NMSA 1978.

[20.7.3.905 NMAC - Rp, 20.7.3.905 NMAC, 9/1/13; A, 9/1/13]

## NEW MEXICO PUBLIC REGULATION COMMISSION

### TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 11 TELECOMMUNICATIONS PART 28 INSTITUTIONAL OPERATOR SERVICE PROVIDERS

**17.11.28.1 ISSUING AGENCY:**  
New Mexico Public Regulation Commission.  
[17.11.28.1 NMAC – N, 08-15-13]

**17.11.28.2 SCOPE:** This rule is applicable to all institutional operator service providers ("IOSPs") certified to operate within the state of New Mexico and also to those IOSPs who apply to the Commission to operate within the state of New Mexico.  
[17.11.28.2 NMAC – N, 08-15-13]

**17.11.28.3 S T A T U T O R Y AUTHORITY:** This rule is adopted pursuant to Article XI, Section 2 of the New Mexico Constitution and Section 8-8-4 et seq.; Sections 63-7-1 et seq. and 63-9A-1 et seq., NMSA 1978.  
[17.11.28.3 NMAC – N, 08-15-13]

**17.11.28.4 D U R A T I O N :**  
Permanent.  
[17.11.28.4 NMAC – N, 08-15-13]

**17.11.28.5 EFFECTIVE DATE:**  
August 15, 2013, unless a later date is cited at the end of a section.  
[17.11.28.5 NMAC – N, 08-15-13]

**17.11.28.6 OBJECTIVE:** The purpose of this rule is to establish statewide uniform regulations governing IOSPs so as to ensure reasonable rate regulation for IOSPs while protecting consumers against unreasonable rates and inadequate service.  
[17.11.28.6 NMAC – N, 08-15-13]

**17.11.28.7 DEFINITIONS:** As used in this rule, the following terms have the meanings provided, unless a different meaning is clearly expressed in the context in which the term is used. The commission will interpret the definitions broadly enough to ensure compliance with the purpose of this rule:

**A. " c o m m i s s i o n "**  
means the New Mexico public regulation commission;

**B. "complaint"** means an oral or written expression of dissatisfaction with an IOSP's rates, fees, charges, or services, including a request for repair involving service outage, made to the IOSP, correctional institution, or to the commission

by or on behalf of a consumer;

**C. “consumer”** means a person who is an account holder or one who funds, initiates or receives a telephone call from an institutional phone; for purposes of those portions of this rule that apply to the funding of prepaid accounts, consumer also means a person who funds a prepaid account for IOSP services;

**D. “correctional institution”** means a jail, prison, penal facility or other confinement facility;

**E. “institutional operator service”** means intrastate telecommunications services initiated by a confined person in a correctional institution that includes, as a component, automatic or live assistance to arrange for completion or billing, or both, of an intrastate telephone call, consistent with 47 C.F.R., Section 64.708(i);

**F. “institutional operator service provider”** (IOSP) means a provider of institutional operator service;

**G. “institutional phone”** means a telephone instrument accessible only to confined persons in a correctional institution;

**H. “local call”** means a telephone call which originates on an institutional phone and terminates to a telephone number within the same local calling area as defined by the local exchange company for the area in which the call originates;

**I. “postpaid collect call”** means a call for which the rate or charge is billed to the call recipient on the monthly bill from the recipient’s local telephone company, or from the IOSP, or from a third-party IOSP billing agent;

**J. “prepaid collect call”** means that the rate or charge of the call is deducted from an account funded in advance by the call recipient for this purpose;

**K. “prepaid institutional call”** means a call for which the confined person pays the rate or charge for the call by purchasing, generally from the commissary at the correctional institution, either a prepaid card from which the rate or charge for the call is subtracted or, if without a prepaid card, by setting up a prepaid account from which the rate or charge of the call can be deducted;

**L. “rate cap”** means the maximum allowable rates, fees and charges for intrastate calls initiated from an institutional phone as approved by the commission;

**M. “toll call”** means a telephone call which originates on an institutional phone and terminates to a telephone number in a different local calling area as defined by the local exchange company for the area in which the call originates.

[17.11.28.7 NMAC – N, 08-15-13]

**17.11.28.8 EXEMPTIONS:** IOSPs are exempt from 17.11.15 NMAC, rule concerning payphone providers, 17.11.16.11 NMAC, consumer protection, access to service and rate information, and SCC 94-02-TC, rule concerning operator services providers.

[17.11.28.8 NMAC – N, 08-15-13]

**17.11.28.9 APPLICATION FOR CERTIFICATION OF REGISTRATION:**

**A.** Providers currently offering institutional operator service to persons housed in correctional institutions in New Mexico as of the effective date of this rule shall submit an expedited application for registration in the format prescribed by the commission within ninety (90) days of the effective date of this rule as described in this section.

(1) Staff shall review an application for a certificate of registration within thirty (30) calendar days after filing to determine whether it is complete. If the application is complete the director of the utility division, or the director’s designee, shall issue a certificate of registration if it finds that the applicant is fit to provide institutional operator services, and that issuance of the certificate of registration is in the public interest.

(2) If the application is incomplete, staff will return it to the applicant. A certificate of registration may be denied for failure to provide the required information or documents, or for failure to remit the required fees. Notice of denial will include a statement indicating the reason for rejection. Denial may be cured if corrected within thirty (30) days of service of the notice.

**B.** Providers seeking to offer or provide any telecommunications service through an institutional phone must register with the commission in the format provided by the commission.

(1) In addition to the application for registration, the IOSP must file a copy of the information to be posted or supplied at every institutional phone or otherwise provided to the confined persons containing all the information as spelled out in this rule.

(2) Registration may be denied for failure to provide the required information or documents, or for failure to remit the required fees. Notice of denial will include a statement indicating the reason for rejection. Denial may be cured if the stated reasons for rejection are made within thirty (30) days of service of the notice.

**C.** Registration shall be renewed annually by filing an annual report on a form prescribed by the commission. The annual report shall be submitted by April 1<sup>st</sup> of each year and shall contain information regarding the prior year. At a minimum, the

IOSP shall update any information contained in its original application for registration or last annual report, as appropriate.

[17.11.28.9 NMAC – N, 08-15-13]

**17.11.28.10 CONTENTS OF APPLICATION FOR REGISTRATION:**

An application for a certificate of registration to provide institutional operator services must contain:

**A.** the name, address, e-mail address and telephone number of the applicant;

**B.** the name, address, e-mail address, and telephone number of the person responsible for regulatory contacts and customer dispute resolution on behalf of the applicant;

**C.** a description of the applicant’s existing operations and general service and operating areas in any other jurisdictions;

**D.** a statement that the applicant is aware of and will comply with the commission’s rules;

**E.** disclosure of any formal actions against it by any court or state or federal regulatory agency that resulted in any type of penalty or sanctions within the five (5) years prior to the date of filing the application; if such action has occurred, the applicant shall file a report regarding such action and any remedial actions taken;

**F.** disclosure of any settlement or stipulation with any state or federal regulatory agency within the three (3) years prior to the date of filing the application that resulted in a payment to the agency with or without any admission of wrongdoing;

**G.** if the applicant is a corporation, evidence that the applicant is authorized by the corporations bureau of the office of the New Mexico secretary of state to do business in New Mexico and that it is in good corporate standing in New Mexico;

**H.** if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the applicant’s agent for service of process in New Mexico, and the date the entity was created;

**I.** initial tariffs for regulated telecommunications services, including a narrative description of the services to be offered and the geographic area and markets to be served; initial tariffs shall not contain misleading, potentially misleading, deceptive, or fraudulent names, rates, fees, charges, terms, or conditions;

**J.** if the applicant is a regulated carrier, any other information the commission may reasonably require to accomplish the purpose of this rule; and

**K.** a list of the applicant’s parent, subsidiary, and affiliated companies



that are carriers in New Mexico together with the principal address and telephone numbers of each.

[17.11.28.10 NMAC – N, 08-15-13]

**17.11.28.11 DISCLOSURE OF RATES, FEES AND CHARGES:**

**A.** All IOSPs must disclose their rates, fees, and charges:

(1) For all local calls, and intrastate toll calls the IOSP shall comply with all rate disclosure requirements adopted by the federal communications commission in Title 47 C.F.R. Section 64.710 (operator services for prison inmate phones), including any amendments thereto.

(2) Rates, fees and charges applied pursuant to this rule shall be made available to the consumer prior to the commencement of the transaction without the consumer having to dial a separate telephone number or access a separate website. Such information shall include an equally prominent disclosure of alternative funding or refunding mechanisms that are free of transactional fees.

**B.** The information required by this section must be delivered to the correctional institution by the IOSP for posting on or near the institutional phone, in plain view of confined persons, provided that such signage is allowed by the correctional institution. The posted signage must clearly and simply disclose all applicable rates, fees and charges for institutional operator services set forth in this rule and provide the contact information for the IOSP for consumer complaints as well as the mailing address of the commission's consumer relations division for unresolved consumer complaints.

**C.** An IOSP shall disclose all rate information, including all applicable per-call and per-minute rates, in simple and clear language.

**D.** All required information and instructions, if allowed by the correctional institution, must be provided in both English and Spanish, and an IOSP must supply each facility it serves with a display placard or other means of informing confined persons.

**E.** Consumers who are not confined persons shall be advised of contact information for consumer complaints on their bill when that bill includes charges for postpaid collect calls, or each time a funding transaction related to a prepayment account takes places, and shall have access to the IOSP's customer service representative.

[17.11.28.11 NMAC – N, 08-15-13]

**17.11.28.12 COMPLAINTS:**

Complaints regarding violations of this rule shall be governed by 1.2.2.13 NMAC through 1.2.2.20 NMAC and 17.11.16.22 NMAC. All other procedural matters shall be handled in accordance with 1.2.2 NMAC

and 1.2.3 NMAC.

[17.11.28.12 NMAC – N, 08-15-13]

**17.11.28.13 ENFORCEMENT:**

**A. Initiation of proceedings:** Upon receipt of a complaint alleging a violation of this rule, or on its own motion, the commission may initiate proceedings in accordance with its rules of procedure 1.2.2.13 NMAC through 1.2.2.15 NMAC.

**B. Penalties:** Following notice and hearing and upon a proper finding that a violation of this rule has occurred, the commission may, consistent with its statutory authority, assess fines or penalties or other such remedies as may be provided for by law, including revocation of authority to provide Institutional operator service. The remedy imposed by the commission may be reduced or rescinded if violations or findings of non-compliance are corrected within thirty (30) days from the date of the commission's final order.

**C. Other penalties:** The assessment of any penalty by the commission for a violation of this rule shall not preclude the assessment of a penalty by any other New Mexico agency for violation of its rules arising from the same cause.

[17.11.28.13 NMAC – N, 08-15-13]

**17.11.28.14 INSTITUTIONAL OPERATOR SERVICE RATES, FEES AND CHARGES:**

**A.** All IOSPs must file tariffs with the commission which set forth the services provided along with any rates, fees, or charges for those services and list each correctional institution to which those rates, fees, or charges apply. Tariffs shall also identify the billing and collection methods utilized by the IOSP such as postpaid collect, prepaid collect, prepaid institution and any other payment alternatives. No tariff or proposed tariff shall contain misleading, potentially misleading, deceptive, or fraudulent names, rates, fees, charges, terms or conditions.

**B.** Rate caps shall be determined periodically by the commission on its own motion following notice and a public hearing, but no more frequently than once every three years. In the absence of a hearing by the commission, the rate caps previously established will remain in effect.

**C.** Any changes in IOSP rates, fees or charges and any cessation or commencement of institutional operator service at a particular correctional institution resulting from a new, renewed, or amended contract between an IOSP and the correctional institution must be reflected in a proposed tariff amendment filed no later than ninety (90) days after the final award of the contract to the IOSP or after any agreement to change the rates, fees or

charges is reflected in a renewed or amended contract.

(1) The IOSP shall file with the commission an original and five (5) copies of the proposed tariff changes within the time frame provided for in this rule. The IOSP shall include in its filing a sequentially numbered transmittal letter, (e.g., 2010-1, 2010-2, etc.) containing a description of the proposed tariff changes. The proposed tariff change shall comply with all applicable commission rules. The proposed tariff changes may go into effect ten (10) business days after the tariff filing unless staff notifies the IOSP within said ten (10) business days of its concerns regarding the proposed tariff changes. If staff and the IOSP are able to resolve staff's concerns within ten (10) business days after the tariff filing, the proposed tariff changes may go into effect and no public hearing shall be required.

(2) If staff and the IOSP are unable to resolve staff's concerns, staff shall file a protest with the records management bureau of the administrative services division, and promptly send a copy to the IOSP and the proposed tariff change shall not go into effect. The records management bureau shall assign a docket number to staff's protest. Staff's protest shall include a case caption and a heading that states "staff protest". The protest shall include as an attachment the proposed tariff changes filed by the IOSP and any additional information furnished to staff by the IOSP. The applicant shall have the burden of showing, after notice and hearing, why the proposed new service, promotion, or tariff change is in the public interest.

(3) On the same day it files paper copies of the proposed tariff changes with the commission, the IOSP shall also submit an electronic copy of the transmittal letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The commission may prescribe additional form, content, manner of filing, or other requirements.

**D.** Any other changes in IOSP rates, fees, charges, or type of service, and any addition of a new service must be reflected in a proposed tariff amendment. No such change may be effectuated by the IOSP prior to commission approval of the tariff amendment.

(1) The IOSP shall file with the commission an original and five (5) copies of the proposed tariff changes within the time frame provided for in this rule. The IOSP shall include in its filing a sequentially numbered transmittal letter, (e.g., 2010-1, 2010-2, etc.) containing a description of the proposed tariff changes. The proposed tariff change shall comply with all applicable commission rules. The proposed tariff

changes may go into effect ten (10) business days after the tariff filing unless staff notifies the IOSP within said ten (10) business days of its concerns regarding the proposed tariff changes. If staff and the IOSP are able to resolve staff's concerns within ten (10) business days after the tariff filing, the proposed tariff changes may go into effect and no public hearing shall be required.

(2) If staff and the IOSP are unable to resolve staff's concerns, staff shall file a protest with the records management bureau of the administrative services division, and promptly send a copy to the IOSP and the proposed tariff change shall not go into effect. The records management bureau shall assign a docket number to staff's protest. Staff's protest shall include a case caption and a heading that states "staff protest". The protest shall include as an attachment the proposed tariff changes filed by the IOSP and any additional information furnished to staff by the IOSP. The applicant shall have the burden of showing, after notice and hearing, why the proposed new service, promotion, or tariff change is in the public interest.

(3) On the same day it files paper copies of the proposed tariff changes with the commission, the IOSP shall also submit an electronic copy of the transmittal letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The commission may prescribe additional form, content, manner of filing, or other requirements.

**E.** Every institutional phone in New Mexico shall provide access to the services listed below without the use of coins or cards of any type, and without any charge to the consumer:

(1) any call to obtain a refund;

(2) access to automated operator services necessary to establish a call.

**F.** An IOSP may not bill any rate, fee, or charge that is not part of its tariff. Any per call charge, surcharge or fee shall not be billed or charged by the IOSP before the second minute of the call begins.

**G.** An IOSP may not bill or charge any transactional fee in connection with the establishment of, funding to, or refunding from an account in the consumer's name used for the prepayment of institutional operator service that has not been previously approved for that purpose by the commission.

**H.** An IOSP may assess fees that are included in the IOSP's filed tariffs.

**I.** Effective dates: The rate caps established pursuant to this rule:

(1) shall not apply to any contract that was executed prior to the effective date of this rule;

(2) shall not apply to any contract for which a response to a request for proposal was submitted prior to the effective date of this rule;

(3) shall apply to any contract executed ninety (90) days following the effective date of this rule; and

(4) shall apply to any contract that is renewed or renegotiated ninety (90) days following the effective date of this rule.

[17.11.28.14 NMAC – N, 08-15-13]

#### **17.11.28.15 RESPONSIBILITIES OF THE INSTITUTIONAL OPERATOR SERVICE PROVIDER:**

**A.** An IOSP shall not contract for any intrastate operator services or interexchange services with any entity that is out of compliance with the applicable certification requirements of the commission.

**B.** The IOSP shall be responsible for all public access line charges associated with the provision of institutional operator service.

**C.** The IOSP shall be responsible for paying all required regulatory fees to the commission.

**D.** Subject to compliance with any access requirements of the correctional institution, IOSPs will make available to the commission, subject to notice and coordination, any institutional phone for purposes of making test calls, free of charge, to telephone numbers of the commission's choosing.

**E.** All institutional phones and the telecommunications facilities used for the transmission of service are subject to periodic inspections to ensure compliance with commission requirements. Findings of non-compliance will be brought to the attention of the IOSP and the correctional institution by letter and the IOSP will have thirty (30) days to restore compliance with commission requirements.

**F.** The IOSP shall be responsible for repairing, servicing and maintaining in good repair the institutional phones through which it provides service.

**G.** All institutional phones installed in New Mexico shall comply with state and local laws, commission rules, current national electrical code and national electrical safety code requirements, and the generally accepted telecommunications industry technical standards of the national association of regulatory utility commissioners.

**H.** All calls initiated from an institutional phone will be outbound automated operator calls that are either postpaid collect call, prepaid collect call or prepaid institution call.

**I.** An IOSP shall provide a means for a confined person who has not had an opportunity to arrange for prepaid calling services to make an outgoing postpaid

collect call.

**J.** The minimum allowance for the duration of a call initiated from an institutional phone shall be determined by the correctional institution.

**K.** No more than three (3) institutional phones will share a common voice-grade (non-broadband) access line or channel, unless otherwise specifically authorized by the commission.

**L.** Institutional phones operating in New Mexico must comply with all applicable federal, state and local laws regarding accessibility by hearing impaired or physically disabled persons.

**M.** All IOSPs must provide both local and toll service at each correctional institution they serve.

**N.** Institutional operator service transmission quality shall be at least equivalent to generally accepted industry standards for wireline, voice-grade circuits, except that IOSPs will not be held responsible for calls terminating to cordless landlines, cell phones, or other non-traditional landline devices. There will be no transmission delay, feedback, excessive noise, or echo perceptible to either the inmate or the called party. The commission will make the final determination as to the acceptable level of transmission service quality.

[17.11.28.15 NMAC – N, 08-15-13]

#### **17.11.28.16 RESTRICTIONS ON INSTITUTIONAL TELEPHONE SERVICE:**

Operators of correctional institutions have the authority to limit or deny access to institutional phones telephones at times and in circumstances deemed proper by the correctional institution.

[17.11.28.16 NMAC – N, 08-15-13]

#### **17.11.28.17 RATE CAP VARIANCES:**

**A.** The commission may permit an IOSP to impose rates higher than the rate caps as provided for in the rate caps chart below as may be amended from time to time or as stated in a separate commission order for good cause shown. Such permission shall not be unreasonably withheld.

[Continued on page 575]

## RATE CAPS CHART

Intrastate	Prepaid Inmate	Prepaid Collect	Collect
Local per call	\$0.00	\$0.00	\$1.00
per minute	\$0.15	\$0.15	\$0.15
15-min call	\$2.25	\$2.25	\$3.25
IntraLATA			
per call	\$0.00	\$0.00	\$1.00
per min	\$0.15	\$0.15	\$0.15
15-min call	\$2.25	\$2.25	\$3.25
InterLATA			
per call	\$0.00	\$0.00	\$1.00
per min	\$0.15	\$0.15	\$0.15
15-min call	\$2.25	\$2.25	\$3.25
<b>Processing</b>	<b>Call-In</b>	<b>Web</b>	
Credit card/check by phone-initial	\$3.00	\$3.00	
Credit card/check by phone-subsequent	\$3.00	\$3.00	
refund of unused balance	\$3.00	\$3.00	

**B.** An IOSP seeking a variance under this rule must file a petition for variance with the commission providing the following information:

- (1) the correctional institution at which the rate that exceeds the rate cap would be applied;
- (2) the rate to be applied and the respective existing rate cap;
- (3) the reason for which a higher rate will be applied shall include the following information about the proposed service for the call type for which the variance is sought:

- (a) projected monthly and yearly call volume by call type;
- (b) projected monthly and yearly revenue by call type; and
- (c) projected monthly and yearly average call duration by call type.

**C.** The petition must include a sworn statement by a knowledgeable representative of the petitioner attesting to the truth and accuracy of its contents.

**D.** The petition shall be accompanied by a proposed tariff change that incorporates the higher rate that the petitioner seeks to impose. All IOSP tariffs shall include a section for rate variances in which all such higher rates are to be listed.

**E.** At the request of the petitioner, the information provided pursuant to Paragraphs (1) and (3) of Subsection B herein will be treated as confidential and will not be disclosed to any person other than an employee or member of the commission until the petitioner consents in writing to such disclosure.

**F.** Staff shall review the petition for variance within thirty (30) days to determine whether it is supported by the information provided. Staff may file a written statement with the commission in support of or opposition to the petition within the same thirty-day (30-day) period. The IOSP shall have ten (10) days to respond to any staff position.

**G.** In the absence of any commission action on the petition, the petition will be deemed granted and the proposed tariff change will be deemed approved forty-five (45) calendar days from the filing of the petition.

**H.** IOSPs are not subject to Section 1.2.2.40 NMAC for matters related to rate variances pursuant to this rule.  
[17.11.28.17 NMAC – N, 08-15-13]

**17.11.28.18 CONSUMER PROTECTION:**

**A.** The IOSP shall complete a call only upon a positive response from the consumer that the consumer accepts all previously disclosed charges for the call. The provider shall allow consumers the opportunity to decline and thus terminate the call at no charge to the consumer. If the IOSP does not receive a positive response within a period not exceeding twenty (20) seconds from the last prompt, the call shall be terminated without charge. IOSPs shall not charge for any calls that are not accepted by the called party.

**B.** Where not superseded by the express language of this rule, the commission's consumer protection rule, 17.11.16 NMAC, applies, except for those provisions that by their language apply only to non-IOSPs.  
[17.11.28.18 NMAC – N, 08-15-13]

**17.11.28.19 REPORTING REQUIREMENTS:**

**A.** Existing IOSPs shall report to the commission not later than April 1 of the calendar year following the effective date of this rule and new IOSPs shall report to the commission within ninety (90) days of certification the type of access line(s) and the number of institutional phones installed by correctional facility for each correctional facility in New Mexico served by the provider on December 31 of the preceding year or, in the case of new IOSPs, the latest date such information is available. IOSPs shall update this information upon staff's request.

**B.** IOSPs shall report to the commission not later than April 1 the number and percentage of calls initiated from an institutional phone with a duration of sixty (60) seconds or less by correctional institution for the preceding calendar year.

**C.** Upon request from the commission, IOSPs must, in a timely manner, and in accordance with confidentiality agreements between the IOSP and commission staff as necessary, submit data requested by the commission relating to its New Mexico operations, including but not limited to, revenue, expenses and facilities/usage data by inmate facility.

**D.** IOSPs shall report to the commission not later than April 1 the complaints it received about the service provided in New Mexico during the preceding calendar year. Complaints shall be categorized by type of complaint with a description of how each complaint

was handled. The categories of complaints shall include at least the following: service, billing, rates, and other.

**E.** Not later than March 15 of each year, commission staff will provide a letter to each correctional institution in New Mexico and to the respective IOSPs with information about the commission's jurisdiction over IOSPs.

[17.11.28.19 NMAC – N, 08-15-13]

**17.11.28.20 TRANSFER OF**

**CERTIFICATE:** Any holder of a certificate of registration to provide institutional operator services in New Mexico seeking to transfer the certificate to another person shall first apply to the commission for approval of the transfer. The commission shall approve an application for transfer of a certificate of registration upon receipt of a completed application and a copy of the tariff proposed to take effect upon approval of the transfer. The application shall meet the requirements of 17.11.12.10 NMAC.

[17.11.28.20 NMAC – N, 08-15-13]

**17.11.28.21 NOTICE OF**

**CHANGE IN CIRCUMSTANCE:** An IOSP shall notify the commission in writing of the following change in circumstances:

**A.** a change in the IOSP's name, address, or phone number;

**B.** a change in the name, address, or phone number of the person responsible for regulatory contacts and consumer dispute resolution;

**C.** merger of the IOSP with another provider;

**D.** acquisition of the IOSP by another provider;

**E.** acquisition by the IOSP of another provider;

**F.** transfer of the IOSP's certificate;

**G.** transfer of a significant portion of the IOSP's assets to another provider; and

**H.** any other change in control of the IOSP.

[17.11.28.21 NMAC – N, 08-15-13]

**17.11.28.22 DISCONTINUANCE OF SERVICE:**

**A.** Prior to discontinuing service, an IOSP shall, no later than thirty (30) days prior to discontinuing service, file with the commission a notice of discontinuance of service showing the number of correctional institutions affected.

**B.** This section does not apply to individual service withdrawals of an IOSP.

[17.11.28.22 NMAC – N, 08-15-13]

**17.11.28.23 WAIVERS:** The commission recognizes that public health and safety and the requirements of the

correctional institution may require exceptions to requirements contained in this rule. In those cases, the IOSP may petition the commission for a waiver of a particular requirement, which shall not be unreasonably withheld.

[17.11.28.23 NMAC – N, 08-15-13]

**17.11.28.24 SEVERABILITY:**

If any part of this rule is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[17.11.28.24 NMAC – N, 08-15-13]

**17.11.28.25 VARIANCES:**

**A.** Any IOSP may request a variance from any requirement of this rule.

**B.** A petition for a variance shall be supported by an affidavit signed by an officer of the applicant or a person with authority to sign for the applicant.

**C.** Any variance must contain the information required by the commission's procedural rules under 1.2.2.40 NMAC.

[17.11.28.25 NMAC – N, 08-15-13]

**HISTORY OF 17.11.28 NMAC:**  
[RESERVED]

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

14.12.3 NMAC, Modular Structures (filed 01-16-2003) repealed and replaced by 14.12.3 NMAC, New Mexico Modular Building Structures, effective 9-1-13.

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

**TITLE 14 HOUSING AND  
CONSTRUCTION  
CHAPTER 12 MANUFACTURED  
HOUSING  
PART 3 NEW MEXICO  
MODULAR BUILDING STRUCTURES**

**14.12.3.1 ISSUING AGENCY:**

The Construction Industries Division of the Regulation and Licensing Department.

[14.12.3.1 NMAC - Rp, 14.12.3.1 NMAC, 9-1-13]

**14.12.3.2 SCOPE:** The construction, alteration, repair, use and occupancy of modular structures in the state of New Mexico.

[14.12.3.2 NMAC - Rp, 14.12.3.2 NMAC, 9-1-13]

**14.12.3.3 STATUTORY**

**AUTHORITY:** These standards are adopted pursuant to Sections 60-13-9 (K) and (F), and 60-13-44 (H) and (I) of the Construction Industries Licensing Act, NMSA 1978 (1989 replacement pamphlet).

[14.12.3.3 NMAC - Rp, 14.12.3.3 NMAC, 9-1-13]

**14.12.3.4 DURATION:**

Permanent.

[14.12.3.4 NMAC - Rp, 14.12.3.4 NMAC, 9-1-13]

**14.12.3.5 EFFECTIVE DATE:**

August 1, 2013, unless a later date is cited at the end of a section.

[14.12.3.5 NMAC - Rp, 14.12.3.5 NMAC, 9-1-13]

**14.12.3.6 OBJECTIVE:**

The objective of this part is to promote the general welfare of the people of New Mexico by providing for the protection of life and property through construction codes, rules, and standards, the compliance with which will result in safer modular structures.

[14.12.3.6 NMAC - Rp, 14.12.3.6 NMAC, 9-1-13]

**14.12.3.7 DEFINITIONS:** The following terms shall have the meaning indicated when used in this standard.

**A. "Act"** means the Construction Industries Licensing Act (Sections 60-13-1 through 60-13-59, NMSA 1978) and the LP Gas Act (Sections 70-5-1 through 70-5-22, NMSA 1978).

**B. "Code"** means the codes set forth in 14.12.3.8 NMAC.

**C. "Commercial use"** shall have the same meaning as that given it in the New Mexico commercial building code.

**D. "Commission"** means the construction industries commission.

**E. "Department"** means the regulation and licensing department.

**F. "Director"** means the administrative head of the division.

**G. "Division"** means the construction industries division of the regulation and licensing department.

**H. "Foundation inspection"** means the subsequent on-site inspection of the foundation, utility connections, and other items related to the permanent placement of a modular structure set in New Mexico for code compliance pursuant to the requirements of this part by a certified inspector.

**I. "Inspection"**

**(1) "In-plant inspection"** means the inspection of a modular structure for code

compliance pursuant to the requirements of this part by an approved inspector or a division inspector.

(2) **“Placement inspection”** means the subsequent on-site inspection of the foundation, hook-ups, and other items related to the permanent placement of a modular structure set in New Mexico for code compliance pursuant to the requirements of this part by a division inspector or a local inspector.

**J. “Inspector”**

(1) **“Division inspector”** means an inspector employed by the division to conduct building inspections.

(2) **“Approved inspector”** means an inspector other than a division inspector approved by the division to perform in-plant inspections of modular structures pursuant to this part.

**K. “Manufacturer”** means any person engaged in the manufacture, construction and assembly of modular structures.

**L. “Modular structure”** means any structure built for use or occupancy by persons or property, whether or not designed to be placed on a permanent foundation. Modular structures include factory-built buildings and subassemblies for manufactured residential and commercial units. Modular structure does not include non-assembled component parts that are subject to all permit and inspection requirements, or to manufactured housing structures that are subject to federal regulation.

**M. “Plans”** means those design documents and related specifications required for the manufacture of any given modular structure as required by code.

**N. “Residential use”** shall have the same meaning as that given it in the currently adopted New Mexico building code.

**O. “Modular non-assembled components”** means constructed components of a residential building, built out of state but assembled on site. [14.12.3.7 NMAC - Rp, 14.12.3.7 NMAC, 9-1-13]

**14.12.3.8 APPLICABLE CODES AND STANDARDS:** The codes and standards applicable to the construction, alteration, repair, use, occupancy and installation of modular structures are the current codes, applicable statutes, rules, regulations, and standards approved by the commission and adopted by the division that govern construction in the state of New Mexico. [14.12.3.8 NMAC - Rp, 14.12.3.8 NMAC, 9-1-13]

**14.12.3.9 REGISTRATION:** No person shall act as a manufacturer in

New Mexico and no person who acts as a manufacturer outside New Mexico shall ship a modular or an ANSI/UL approved structure into New Mexico, unless such person is registered with the division as provided in this part.

[14.12.3.9 NMAC - Rp, 14.12.3.9 NMAC, 9-1-13]

**14.12.3.10 REGISTRATION REQUIREMENTS:**

**A.** Applicants for registration pursuant to this part must submit the following:

(1) a completed registration application in form and content satisfactory to the division;

(2) a fee in the amount of \$50.00 for manufacturers of modular structures for residential use only; and a fee in the amount of \$100.00 for manufacturers of modular structures for commercial and residential use;

(3) proof of financial responsibility as follows:

(a) for manufacturers of modular structures for residential use, in the amount of \$5,000;

(b) for manufacturers of modular structures for commercial and residential use, in the amount of \$20,000.00;

(c) financial responsibility may be demonstrated by filing with the division and maintaining without interruption for the duration of registration a surety bond issued by an insurance company authorized to do business in the state of New Mexico;

(d) all bonds must authorize the division to liquidate the bond to the extent necessary for the payment of fines or penalties as may be assessed under 14.12.3.17 NMAC of the standards that the registrant fails to promptly pay when due.

**B. O u t - o f - s t a t e** manufacturers must submit proof of compliance with all applicable licensing requirements of the state.

**C.** In-state manufacturers must be licensed by the division in the GB-02 classification for manufacture of modular structures for residential use or in the GB-98 classification for manufacture of modular structures for commercial or residential use.

**D.** A manufacturer may be denied registration if there are any unresolved consumer complaints against the manufacturer.

**E. O u t - o f - s t a t e** manufacturers must submit proof of association with an inspector who has assumed responsibility for the in-plant inspections required by this part and shall request division approval of the inspector if not already approved. Upon satisfactory compliance with the all of the requirements for registration the division shall issue a modular certificate of authority to the

manufacturer.

**F.** Modular certificates of authority issued by the division are not transferable and the registration fee is not refundable.

**G.** Any change in the information submitted by an applicant for a modular certificate of authority or renewal thereof must be reported, in writing, to the division within 30 days after such change occurs.

[14.12.3.10 NMAC - Rp, 14.12.3.10 NMAC, 9-1-13]

**14.12.3.11 RENEWAL:**

**A.** Any modular certificate of authority issued by the division shall expire on the date that is three years from the date of issuance.

**B.** The registrant may renew a modular certificate of authority by submitting a completed renewal application in form and content satisfactory to the division not later than thirty days prior to the expiration of the modular certificate of authority.

**C.** An application for renewal shall include with it payment of a renewal fee in the amount of \$100.00 per year or the amount of the fee for renewal of a GB-98 license, whichever is greater.

**D.** A modular certificate of authority renewed by the division shall expire on the date that is not less than one year and no more than three years from the date of renewal.

**E.** The renewal fee is not refundable.

[14.12.3.11 NMAC - Rp, 14.12.3.11 NMAC, 9-1-13]

**14.12.3.12 APPROVED INSPECTORS:**

**A.** Approval of inspectors.

(1) No inspection of a modular structure shall satisfy the requirements of this part unless conducted by an inspector approved by the division.

(2) An inspector may be approved by the bureau chief of the division responsible for the trade to be inspected. Such approval is conditioned upon the following.

(a) The out of state applicant must obtain a New Mexico state certification in the trade for which approval is sought and a national certification recognized by the division.

(b) Documentation of such certification acceptable to the appropriate bureau chief must be provided to the division.

(c) The applicant must have at least three years of verifiable work experience in the respective trade to be inspected.

(d) Proof of current association through employment, contract or other agreement with a registered manufacturer

for the purpose of conducting inspections of modular structures for that manufacturer must be provided to the division.

(e) Proof of financial responsibility in the amount of \$10,000.00 must be provided to the division. Such proof may be demonstrated by evidence of a surety bond issued by an insurance company authorized to do business in New Mexico.

(3) Any bond submitted as proof of financial responsibility shall authorize the division to liquidate the bond or securities to the extent necessary to pay fines and penalties as may be assessed under 14.12.3.17 NMAC of the standards that the inspector fails to promptly pay when due.

**B.** Any approved inspector must maintain both New Mexico and national certification throughout the course of association with a registered manufacturer for the purposes of conducting inspections required by this part.

**C.** If a registered manufacturer ceases association with its approved inspector of record with the division, the manufacturer shall notify the division in writing within 30 days and shall identify a new inspector for approval pursuant to this part by the division.

**D.** No inspector regulated by the construction industries division and employed by a political subdivision or municipality is eligible to be an approved in-plant inspector.  
[14.12.3.12 NMAC - Rp, 14.12.3.12 NMAC, 9-1-13]

#### 14.12.3.13 COMPLIANCE:

**A.** Any modular structure manufactured in New Mexico, or to be shipped into New Mexico for placement, must comply with the following provisions.

**B.** Code compliance shall be determined through a three-step process.

(1) Step one - plan review.

(a) Modular structures to be sold or placed in New Mexico must be constructed according to plans that have been submitted by registered manufacturers and reviewed and approved by the division.

(b) Manufacturers must submit two sets of plans for each modular structure design together with the appropriate plan review fee.

(c) Plans must include a recommended method of anchoring the modular structure to a foundation.

(d) The plans shall be submitted and reviewed by the division for code compliance pursuant to all rules, procedures and guidelines established by the division and compliance with the currently adopted New Mexico state codes, rules, procedures and guidelines established by the division for all modular plan review.

(e) Plans that are not submitted properly or that are determined to be non-

compliant with currently adopted New Mexico state codes shall be rejected by the division.

(f) No modular structure built pursuant to rejected or unapproved plans will be eligible to receive a compliance decal as required by this part as a prerequisite for the sale or permanent placement of a modular structure in New Mexico.

(g) There shall be no deviation in the construction/assembly of a modular structure from the approved plans for the modular structure without the prior written approval of the specific deviation by the division. The division may require the submission of additional design information including revised plans as it deems necessary to make a determination on the approval or rejection of the deviation.

(2) Step two - in-plant inspection.

(a) Each modular structure must receive the following mandatory in-plant inspections during construction/assembly by the manufacturer.

(i) General construction: framing, energy efficiency, weather resistive barrier and pre-final.

(ii) Mechanical: rough-in and top-out.

(iii) Plumbing: rough-in and pre-final.

(iv) Electrical: rough-in and pre-final.

(b) All work required to be inspected must be uncovered and accessible by the inspector at the time of the inspection. Any work covered prior to inspection shall be uncovered as required by the inspector to allow a full assessment of code compliance of the work.

(c) The manufacturer must keep for reference and make available to the inspector upon request an original set of approved plans for each modular structure to be inspected.

(d) If any inspection reveals a code violation, the inspector shall immediately issue a written correction notice and the manufacturer shall make the indicated correction(s). Thereafter, the inspector shall re-inspect the modular structure to confirm that the correction has been made. If corrective action is not taken, such that code compliance is achieved, the inspector shall cease all inspections and shall not issue any compliance decal(s).

(e) Upon satisfactory completion of the final inspection, the inspector shall issue a final inspection report in which all inspections are documented and the compliance decal number and the modular structure serial number are noted. This final inspection report is due to the division within 10 days after issuance of the compliance decal pursuant to Paragraph (3) of Subsection B of 14.12.3.13 NMAC. Failure to remain current and timely in the

submission of final inspection reports shall cause the manufacturer of the modular structures, which are the subject of such reports, to be ineligible to order or receive compliance decals until all outstanding final inspection reports are received by the division.

(3) Issuance of compliance decal.

(a) Upon satisfactory completion of all required inspections the inspector shall affix a compliance decal inside the door to the electrical panel or inside the mechanical room of the inspected modular structure.

(b) No compliance decal shall be issued to, or placed on, a modular structure which has been determined to be not compliant with code or wherein all required inspections were not appropriately requested and performed.

(c) If a manufacturer ships into New Mexico or offers for sale in New Mexico a non-compliant modular structure or one that is lacking a decal, the manufacturer shall not be eligible to order compliance decals. The manufacturer's certificate of authority shall be subject to suspension or revocation and the manufacturer may be assessed an administrative fine.

[14.12.3.13 NMAC - Rp, 14.12.3.13 NMAC, 9-1-13]

#### 14.12.3.14 COMPLIANCE DECALS:

**A.** A compliance decal is issued by the division for the purpose of indicating that a given modular structure has been determined to be code compliant pursuant to this part.

**B.** No modular structure may be sold or permanently placed in New Mexico unless a compliance decal has been affixed to it by an inspector after satisfactory completion of the plan review and in-plant inspection requirements set forth in this part.

**C.** Any modular unit manufactured under a national recognized testing laboratory (UL) or approved testing agency (ANSI) shall not be installed in New Mexico unless a compliance decal has been obtained from the division. The compliance decal application must include UL or ANSI verification.

**D.** Compliance decals may be ordered from the division by the manufacturer before or after construction upon payment of the applicable fee(s) and submission of the serial number(s) of the modular structure(s) to which the compliance decal(s) shall apply. All issued compliance decals are sent to the inspector who has or will conduct the required in-plant inspections.

**E.** The fee for each compliance decal shall be as set forth in a fee schedule published by the division. This fee must be paid in full to the division in advance of issuance of the compliance decal(s).

**F.** Compliance decals remain the property of the state of New Mexico. Each decal is unique to the modular structure to which it is assigned and affixed. Compliance decals are not transferable among manufacturers, inspectors, or modular structures.

**G.** Any compliance decal that is not affixed to the modular structure bearing the serial number submitted with the order for that decal must be returned to the division immediately upon the determination that the decal will not be used for that structure; unless the manufacturer has received prior written permission from the division to use the decal on a modular structure that has a different serial number. [14.12.3.14 NMAC - Rp, 14.12.3.14 NMAC, 9-1-13]

#### **14.12.3.15 PLACEMENT OF MODULAR STRUCTURES:**

**A.** Each modular structure to be permanently placed within the state of New Mexico shall be set in accordance with all applicable statutes, codes, rules, regulations and local ordinances governing construction in the state of New Mexico. This includes, but is not limited to, the following basic licensing, plan review, permitting, and inspection requirements.

(1) All permanent foundations to which a modular structure is to be attached shall be appropriately designed and permitted by the division or local building department having jurisdiction.

(a) Commercial modular foundations will require either a New Mexico registered engineer or architect seal.

(b) Residential modular foundations do not require a New Mexico registered engineer or architect seal.

(2) All permanent foundations to which a modular structure is to be attached shall be constructed by a licensed GB-2 or GB-98 contractor for residential units and GB-98 contractor for all commercial units; all final electrical work shall be performed by a properly licensed electrical contractor and journeyman and all mechanical/plumbing mechanical work shall be performed by a properly licensed mechanical/plumbing contractor and journeyman.

(3) The installation of a modular unit shall be performed by a GB-98 (commercial/residential) or GB-2 (residential) contractor who shall be the licensed contractor of record and shall be responsible for the installation of the structure, including out of state modular manufacturer installers.

(4) The appropriately licensed contractor (general, electrical and plumbing/mechanical) shall request all required inspections including but not limited to:

- (a) footings;
- (b) foundation;

- (c) anchoring;
- (d) grounding system;
- (e) electrical pre-final;
- (f) electrical final;
- (g) plumbing final;
- (h) mechanical final;
- (i) LP Gas, if applicable;
- (j) accessibility, if applicable;
- (k) building final and certificate of occupancy.

**B.** Building plans shall be available at the placement site and openings for inspection of anchoring shall be provided.

**C.** If the building official having jurisdiction has reason to believe that a code violation has been covered, the building official may require the removal of panels or the like to reveal covered work. The failure of an inspector to appropriately document all in-plant inspections is cause for a building official to require work to be exposed for inspection.

**D.** Before the building final inspection is conducted the electrical, plumbing/mechanical and all other required inspections must be successfully completed. **The building official having jurisdiction shall issue a certificate of occupancy.**

**E.** The building final inspection report and the certificate of occupancy shall both clearly indicate the manufacturer's name, the serial number of the modular structure, the name of the inspector who conducted the in-plant inspections and the compliance decal number.

**F.** Failure to obtain required inspections and a certificate of occupancy may result in the denial of utility services to the modular structure by the service provider.

[14.12.3.15 NMAC - Rp, 14.12.3.15 NMAC, 9-1-13]

#### **14.12.3.16 EXCEPTIONS:**

**A.** A modular structure that carries a UL or other ANSI approved testing laboratory's label as a rated assembly shall be exempt from Paragraphs (1) and (2) of Subsection B of 14.12.3.13 NMAC. The foundation and accessibility to these structures shall be subject to all applicable codes.

**B.** One story detached accessory structures used as tool and storage sheds, playhouses, and similar uses are exempt from the provisions of the manufacturing code provided the floor area does not exceed 120 square feet for commercial use and 200 square feet for residential use. This exemption shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of the currently adopted New Mexico building codes. All work must be done in a manner that will comply with the code requirements.

[14.12.3.16 NMAC - Rp, 14.12.3.16 NMAC,

9-1-13]

#### **14.12.3.17 REVOCATION, SUSPENSION OR OTHER DISCIPLINE:**

**A.** Violations of this part or any other applicable code are cause for disciplinary action by the commission against a manufacturer or an approved inspector. Such discipline may include suspension or revocation of a modular certificate of authority, withdrawal of inspector approval and an administrative penalty in accordance with Sections 60-13-23 and 23.1 of the Construction Industries Licensing Act, NMSA 1978.

**B.** Any disciplinary action taken by the commission against a registrant shall be taken in accordance with the Uniform Licensing Act, NMSA 1978.

[14.12.3.17 NMAC - Rp, 14.12.3.17 NMAC, 9-1-13]

#### **14.12.3.18 TEMPORARY INSTALLATION:**

**A.** Modular units may be installed on a temporary foundation for a period of up to one year. Units installed as temporary and remaining in place after the one-year period must be placed on a permanent foundation.

**B.** Modular units installed as temporary shall meet all currently adopted New Mexico building codes, and accessibility requirements.

[14.12.3.18 NMAC - Rp, 14.12.3.18 NMAC, 9-1-13]

#### **14.12.3.19 MODULAR NON-ASSEMBLED COMPONENTS:**

**A.** Modular non-assembled component panels will meet all the requirements of this rule with the exception of Sections 14, 15 and 18 of 14.12.3 NMAC.

**B.** Assembly of component panels on site are subject to all building permitting and inspection requirements for site built construction.

[14.12.3.19 NMAC - N, 9-1-13]

#### **History of 14.12.3 NMAC:**

##### **Pre-NMAC History:**

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

CID-GCB-MOD/MFG-85-1, Off-Site Conventionally Built Modular Manufactured Unit Standards, filed 10-24-85;

CID-GCB-MOD/MFG-91-1, Off-Site Conventionally Built Modular Manufactured Unit Standards, filed 06-28-93.

**History of Repealed Material:** CID-GCB-MOD/MFG-91-1, Off-Site Conventionally Built Modular Manufactured Unit Standards, filed 06-28-93, repealed effective 2-16-2003.

14.12.3 NMAC, Modular Structures (filed 1-16-2003) repealed 9-1-13.

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**End of Adopted Rules Section**

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## Submittal Deadlines and Publication Dates 2013

<b>Volume XXIV</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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
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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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