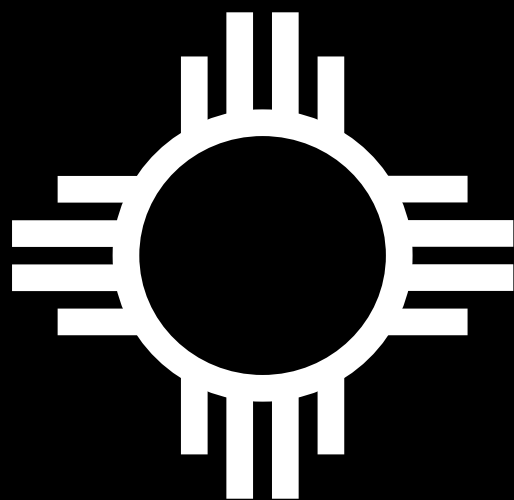


**NEW  
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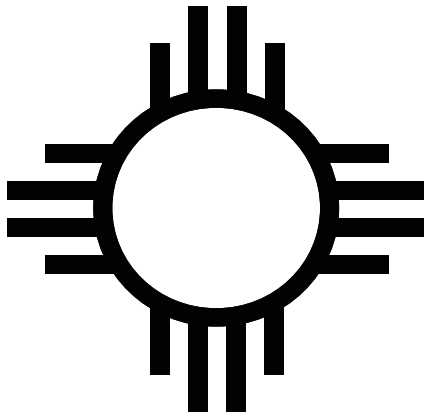


Volume XXIV  
Issue Number 20  
October 31, 2013



# **New Mexico Register**

**Volume XXIV, Issue Number 20  
October 31, 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 20

October 31, 2013

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

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

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO ANIMAL SHELTERING BOARD

#### LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Animal Sheltering Board will hold a Rule Hearing on Friday, December 13, 2013. Following the Rule Hearing the New Mexico Animal Sheltering Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Animal Sheltering Board Rule Hearing will begin at 10:00 a.m. and the Regular Board Meeting will convene following the rule hearing. The meetings will be held at the New Mexico Regulation and Licensing Department, Toney Anaya Building, 2550, Cerrillos Rd Santa Fe, NM in Hearing Room 1.

The purpose of the rule hearing is to consider adoption of proposed amendments, repeals and additions to the following Board Rules and Regulations in 16.24 NMAC: Part 1 General Provisions, Part 2 Licensure and Certification, Part 3 Duties of Licensees and Certificate Holders, Part 4 Complaints, Enforcement and Disciplinary Action, Part 5 Fees, Part 6 Formulary for Euthanasia Technicians.

You can contact the board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87505, call (505) 476-4600 or copies of the proposed rules are available on the Animal Sheltering board's website: [www.rld.state.nm.us/boards/Animal\\_Sheltering\\_Services.aspx](http://www.rld.state.nm.us/boards/Animal_Sheltering_Services.aspx). In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than November 22, 2013. Persons wishing to present their comments at the hearing will need fifteen (15) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4600 at least two weeks prior to the meeting or as soon as possible.

Annette Martinez, Team Leader

PO Box 25101- Santa Fe, New Mexico 87505

### NEW MEXICO GAME COMMISSION

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

On **Thursday, November 14, 2013**, beginning at 8:00 a.m., in the **Taos Convention Center, Rio Grande Hall A, 120 Civic Plaza Drive, Taos, NM 87571**, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: Revocations, Open Meetings Act 10-15-1 to 10-15-4 NMSA 1978, State Game Commission Public Notice Policy, and Update on Initiatives for the 2014 Legislative Session. Additionally they will hear and consider action as appropriate on proposed and final amendments to the following rules: Final Proposed Amendments to the Scientific and Education Rules 19.35.6 and 19.36.2 NMAC, Proposed Amendments to Donation of Licenses and Permits 19.31.3 NMAC, Final Proposed Amendments to the Fisheries Rule 19.31.4 and Manner and Method Rule 19.31.10 NMAC, Proposed Amendments to Oryx Licenses Issued to Wounded Warriors 19.31.12 NMAC, Proposed Amendments to Chronic Wasting Disease Testing Requirements for Importation and Herd Certification Program 19.35.7 and 19.35.9 NMAC, and Final Proposed State Land Easement Agreement 2014-2015 Season. They will hear general public comments (comments are limited to three minutes). A closed executive session is planned to discuss matters related to litigation.

Obtain a copy of the agenda from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

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

various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to repeal and replace the following Medicaid benefit rule that is part of New Mexico Administrative Code (NMAC): 8.310.2 NMAC, *General Benefit Description* and to replace 8.310.3 NMAC, *Rural Health Clinic Services* with 8.310.3 NMAC, *Professional Providers and Reimbursement*. The Rural Health Clinic Services rule is proposed as 8.310.9 NMAC. These two proposed replacement rules will incorporate portions of current rules governing these benefits. The two proposed rules have been updated to incorporate Centennial Care changes and to clarify existing language. The register and the proposed rules are available on the HSD/MAD web site at [www.hsd.state.nm.us/mad](http://www.hsd.state.nm.us/mad). If you do not have Internet access, a copy of the rules may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on Monday, December 2, 2013, at 8:30 a.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Friday, December 6, 2013.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special

accommodations.

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

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### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing a New Mexico Administrative Code (NMAC) new rule: 8.310.12 *Indian Health Services and Tribal 638 Facilities*. This proposed rule incorporates changes to implement Centennial Care and is specific to IHS and tribal 638 facilities enrollment and reimbursement. The register and the proposed rule is available on the HSD/MAD web site at [www.hsd.state.nm.us/mad](http://www.hsd.state.nm.us/mad). If you do not have Internet access, a copy of the rules may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on Monday, December 2, 2013, at 12:30 p.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Friday, December 6, 2013.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a

location within the county of the requestor.

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### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to repeal and replace the following Medicaid benefit rules that are part of the New Mexico Administrative Code (NMAC): 8.324.4 *Pharmacy Services, Prescribing Practitioner Administered Drugs* and 8.324.5 NMAC, *Vision Appliances, Hearing Appliances, Durable Medical Equipment, Oxygen, Medical Supplies, Prosthetics and Orthotics*. These two proposed replacement rules will incorporate portions of current rules governing these benefits. The two proposed rules have been updated to incorporate Centennial Care changes and to clarify existing language. The register and the proposed rules are available on the HSD/MAD web site at [www.hsd.state.nm.us/mad](http://www.hsd.state.nm.us/mad). If you do not have Internet access, a copy of the rules may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on Monday, December 2, 2013, at 1:30 p.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Friday, December 6, 2013.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor

or by making them available on the MAD website or at a location within the county of the requestor.

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### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to repeal and replace the following Medicaid benefit rule that is part of the New Mexico Administrative Code (NMAC): 8.324.7 *Transportation Services and Lodging*. The proposed rule has been updated to incorporate Centennial Care changes and to clarify existing language. The register and the proposed rule are available on the HSD/MAD web site at [www.hsd.state.nm.us/mad](http://www.hsd.state.nm.us/mad). If you do not have Internet access, a copy of the rule may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on Monday, December 2, 2013, at 2:30 p.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Friday, December 6, 2013.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

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**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to repeal and replace the following Medicaid benefit rules that are part of the New Mexico Administrative Code (NMAC): 8.320.2 NMAC, *Early and Periodic Screening, Diagnosis and Treatment (EPSDT)* and 8.320.6 NMAC, *School-based Services for Medical Assistance Programs Eligible Recipients under Twenty-One Years of Age*. The proposed rule of 8.320.2 NMAC will incorporate a number of current EPSDT rules into a single rule. The proposed rule of 8.320.6 NMAC will move the behavioral health benefits to an overarching behavioral health proposed rule of 8.321.2 NMAC. The proposed rule has been updated to incorporate Centennial Care changes and to clarify existing language. The register and the proposed rule are available on the HSD/MAD web site at [www.hsd.state.nm.us/mad](http://www.hsd.state.nm.us/mad). If you do not have Internet access, a copy of the rule may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on Tuesday, December 3, 2013, at 8:30 a.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Friday, December 6, 2013.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor

or by making them available on the MAD website or at a location within the county of the requestor.

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to amend 8.314.6 NMAC *Mi Via and Community Based Services Waiver*. With the implementation of Centennial Care on January 1, 2014, individuals that meet a nursing facility (NF) level of care (LOC) will receive their home and community-based services (HCBS) through the Department's contracted managed care organizations (MCO). The proposed amendment to the Mi Via rule will continue HCBS to individuals with a developmentally disability or are medically fragile. A separate announcement and proposed rules for the HSD contracted MCO's community benefit services (HCBS) has been published alongside this announcement with a separate public hearing.

A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on Tuesday, December 3, 2013 at 9:30 a.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, PO Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comment must be received no later than 5:00 p.m. Mountain Standard Time Friday, December 6, 2013.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the Medical Assistance Division

upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to repeal and replace the following Medicaid benefit rule that is part of the New Mexico Administrative Code (NMAC): 8.321.2 *Specialized Behavioral Health Enrollment and Reimbursement*. The proposed rule will incorporate the behavioral health benefits that are currently located in 8.320.6 NMAC, 8.310.8 NMAC, 8.310.15 NMAC, 8.311.4 NMAC, 8.315.5 NMAC, 8.315.6 NMAC, 8.321.2-8.321.5 NMAC, 8.322.2-8.322.6 NMAC and 8.325.11 NMAC. The proposed rule has been updated to incorporate Centennial Care changes and to clarify existing language. The register and the proposed rule are available on the HSD/MAD web site at [www.hsd.state.nm.us/mad](http://www.hsd.state.nm.us/mad). If you do not have Internet access, a copy of the rule may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on Tuesday, December 3, 2013, at 3:30 p.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Friday, December 6, 2013.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

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### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing new new managed care rules for the implementation of Centennial Care. These proposed rules will be in the New Mexico Administrative Code Chapter 308, Managed Care Program. The two proposed rules for this register are 8.308.9 NMAC *Benefit Package* and 8.308.12 NMAC *Community Benefit Package*. The register and the proposed rules are available on the HSD/MAD web site at [www.hsd.state.nm.us/mad](http://www.hsd.state.nm.us/mad). If you do not have Internet access, a copy of the rules may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on Friday, December 6, 2013, at 8:30 a.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Friday December 6, 2013.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD

website or at a location within the county of the requestor.

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### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing new managed care rules for the implementation of Centennial Care. These proposed rules will be in the New Mexico Administrative Code Chapter 308, Managed Care Program. The two proposed rules for this register are 8.308.13 NMAC *Member Rewards* and 8.308.14 NMAC *Cost Sharing*. The register and the proposed rules are available on the HSD/MAD web site at [www.hsd.state.nm.us/mad](http://www.hsd.state.nm.us/mad). If you do not have Internet access, a copy of the rules may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these two proposed rules will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on Friday, December 6, 2013, at 9:30 a.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Friday December 6, 2013.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (HSD), through the Medical Assistance Division (MAD), is proposing new rules to incorporate elements of the Affordable Care Act (ACA) that include enrollment opportunities for previously ineligible individuals. HSD will issue interim rules to start the process for the enrollment of newly eligible individuals effective October 1, 2013.

The interim rules are only to be effective until December 31, 2013 and within that time HSD must hold a public hearing to promulgate the final rules. The public hearing for these rules will be held on Friday, December 6, 2013 at 12:30 p.m. in the Rio Grande Room, Toney Anaya Building, 2055 Cerrillos Road, Santa Fe. Any changes to the proposed rule will be made in the final rule, to be effective January 1, 2014.

The proposed rules are available on the Medical Assistance Division web site at [www.hsd.state.nm.us/mad](http://www.hsd.state.nm.us/mad). If you do not have Internet access, a copy of the rules may be requested by contacting the Medical Assistance Division at 505-827-3152. Interested persons may submit written comments no later than 5:00 p.m., December 6, 2013 to Sidonie Squier, Secretary, Human Services Department, PO Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

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**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to add a New Mexico Administrative Code (NMAC) chapter with accompanying rules for a new Medical Assistance program for recipients meeting a specific eligibility criteria, known as the Alternative Benefit Program (ABP). Proposed rules are 8.309.2 NMAC, *Managed Care Structure and Organization*; 8.309.3 NMAC, *MCO Administered Benefits and Limitation of Services*; 8.309.4 NMAC, *MAD Administered Benefits and Limitation of Services*. The register and the proposed rules are available on the HSD/MAD web site at [www.hsd.state.nm.us/mad](http://www.hsd.state.nm.us/mad). If you do not have Internet access, a copy of the rules may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on Friday, December 6, 2013, at 2:30 p.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Friday, December 6, 2013.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to repeal the following State Coverage Insurance (SCI) eligibility, Medicaid Managed Care Salud!, State Coverage Insurance (SCI) program, Coordinated Long Term Services (CoLTS) rules that are part of New Mexico Administrative Code (NMAC): 8.262.400 NMAC, *Recipient Policies*; 8.262.500 NMAC, *Income and Resource Standards*; 8.262.600 NMAC, *Benefit Description*. The Department is further proposing to repeal all NMAC rules found in Chapters 8.305, 8.306, and 8.307: 8.305.1 NMAC, *General Provisions*; 8.305.2 NMAC, *Member Education*; 8.305.3 NMAC, *Contract Management*; 8.305.4 NMAC, *Managed Care Eligibility*; 8.305.5 NMAC, *Enrollment in Managed Care*; 8.305.6 NMAC, *Provider Network*; 8.305.7 NMAC, *Benefit Package*; 8.305.8 NMAC, *Quality Management*; 8.305.9 NMAC, *Coordination of Services*; 8.305.10 NMAC, *Encounters*; 8.305.11 NMAC, *Reimbursement for Managed Care*; 8.305.12 NMAC, *MCO Member Grievance System*; 8.305.13 NMAC, *Fraud and Abuse*; 8.305.14 NMAC, *Reporting Requirements*; 8.305.15 NMAC, *Services for Individuals with Special Health Care Needs*; 8.305.16 NMAC, *Client Transition of Care*; 8.305.17 NMAC, *Value Added Services*; 8.306.1 NMAC, *General Provisions*; 8.306.2 NMAC, *Member Education*; 8.306.3 NMAC, *Contract Management*; 8.306.4 NMAC, *Eligibility*; 8.306.5 NMAC, *Enrollment*; 8.306.6 NMAC, *Provider Networks*; 8.306.7 NMAC, *Benefit Package*; 8.306.8 NMAC, *Quality Management*; 8.306.9 NMAC, *Coordination of Benefits*; 8.306.10 NMAC, *Encounters*; 8.306.11 NMAC, *Reimbursement*; 8.306.12 NMAC, *Member Grievance Resolution*; 8.306.13 NMAC, *Fraud and Abuse*; 8.306.14 NMAC, *Reporting Requirements*; 8.306.15 NMAC, *Services for SCI Members with Special Health Care Needs*; 8.307.1 NMAC, *General Provisions*; 8.307.2 NMAC, *Member Education*; 8.307.3 NMAC, *Contract Management*; 8.307.4 NMAC, *Eligibility*; 8.307.5 NMAC, *Enrollment*; 8.307.6 NMAC, *Provider Networks*; 8.307.7 NMAC, *Benefit Package*; 8.307.8 NMAC, *Quality Management*; 8.307.9 NMAC, *Coordination of Services*; 8.307.10 NMAC, *Encounters*; 8.307.11 NMAC, *Reimbursement*; 8.307.12 NMAC, *Member Grievance Resolution*; 8.307.13 NMAC, *Fraud and Abuse*; 8.307.14 NMAC, *Reporting Requirements*; 8.307.15 NMAC, *Services for Members with Special Health*

*Care Needs*; 8.307.16 NMAC, *Client Transition of Care*; 8.307.17 NMAC, *Value Added Services*; 8.307.18 NMAC, *CoLTS 1915 (C) Home and Community-Based Services Waiver*. These existing rules will no longer be effective January 1, 2014 as the Department begins implementation of Centennial Care.

The register and the proposed rules are available on the HSD/MAD web site at [www.hsd.state.nm.us/mad](http://www.hsd.state.nm.us/mad). If you do not have Internet access, a copy of the rule may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these proposed repealed rules will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on Tuesday, December 10, 2013, at 8:30 a.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Friday December 10, 2013.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to repeal and replace the following Medicaid rule that is part of the New Mexico Administrative Code (NMAC): 8.302.2 NMAC, *Billing for Medicaid Services*. The proposed rule has been updated to incorporate information on cost sharing for newly eligible recipients as part of Centennial Care. The register and the proposed rule are available on the HSD/MAD web site at [www.hsd.state.nm.us/mad](http://www.hsd.state.nm.us/mad). If you do not have Internet access, a copy of the rule may be requested by contacting MAD at 505-827-3152.

A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe on Tuesday, December 10, 2013, at 9:30 a.m.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-3152. Electronic comments may be submitted to [Emily.Floyd@state.nm.us](mailto:Emily.Floyd@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Tuesday, December 10, 2013.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-3152. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**NOTICE OF PROPOSED RULEMAKING CASE NO. 13-00310-UT**

The Public Regulation Commission ("PRC" or "Commission") gives notice of its proposed adoption of a new Rule 17.7.2 NMAC governing all public utility applications based on the Efficient Use of Energy Act, NMSA 1978, Sections 62-17-1, et seq. ("EUEA").

Copies of the Order Initiating Rulemaking containing additional information and filing instructions may be downloaded from the Proposed Rulemaking section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 13-00310-UT or by calling the Commission's Records Management Bureau at (505) 827-6970.

Written Initial Comments and written Response Comments shall be filed by the deadlines below with the NMPRC's Record's Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the NMPRC Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 as follows: Written Initial Comments not later than November 4, 2013 and written Response Comments not later than November 13, 2013. Comments shall refer to Case No. 13-00310-UT.

A public hearing will be held on November 20, 2013, beginning at 1:00 p.m. at the offices of the Commission located in the 4<sup>th</sup> Floor Hearing Room of the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe. The purpose of the hearing is to give interested individuals, who have not filed written comments or written responses, an opportunity to give oral comments. The Commission may limit the time for each comment to three minutes. The record of this case will close on December 4, 2013.

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

Statutory Authority: New Mexico Constitution, Article XI, Sec. 2; NMSA 1978, Section 8-8-4(B)(10); the EUEA; NMSA 1978, Sections 62-3-1, et seq.

**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 CID Rule: 14.5.2.10 Permits and 14.5.3.9 Inspections; will be held as follows:

**November 5, 2013, 9:00 a.m. – 12:00 p.m.:**  
**SANTA FE, NM** – CID Conference Room,  
2550 Cerrillos Road, Santa Fe, NM.  
**November 5, 2013, 9:00 a.m. – 12:00 p.m.:**  
**LAS CRUCES, NM** – CID Conference  
Room, 505 South Main Street, Suite 118,

Las Cruces, NM.

**November 5, 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 November 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 November 2, 2013.** Telephone: 505-476-4700 (option "0"). Email: [jerome.baca@state.nm.us](mailto:jerome.baca@state.nm.us) Fax No. 505-476-4619.

**NEW MEXICO  
SIGNED LANGUAGE INTERPRETING PRACTICES  
BOARD**

**NEW MEXICO  
SIGNED LANGUAGE INTERPRETING PRACTICES BOARD**

**PUBLIC RULE HEARING  
AND  
REGULAR BOARD MEETING  
NOTICE**

Notice is hereby given that the New Mexico Signed Language Interpreting Practices Board will convene a public rule hearing at 10:00 a.m. on December 12, 2013. The hearing will be held at the Regulation and Licensing building, 5200 Oakland Dr. NE, Albuquerque, New Mexico.

The purpose of the rule hearing is to consider, for adoption, proposed amendments to the following Board Rules and Regulations in 16.28 NMAC:

- Part 1 – GENERAL PROVISIONS
- Part 2 – EDUCATION AND CONTINUING EDUCATION REQUIREMENTS
- Part 3 – APPLICATION AND LICENSURE REQUIREMENTS
- Part 4 – COMPLAINT PROCEDURES; ADJUDICATORY PROCEEDINGS
- Part 6 - FEES

And adoption of new rules:

- Part 7 – LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at 2550 Cerrillos Road, Santa Fe, New Mexico 87505; or call (505) 476-4622 or access them in the “Proposed Rules” section at [www.rld.state.nm.us](http://www.rld.state.nm.us). A draft of the proposed changes will be available thirty days prior to the hearing. All written comments mailed to the Board office or e-mailed to [Signedlanguage.Board@state.nm.us](mailto:Signedlanguage.Board@state.nm.us) or must be submitted no later than December 2, 2013, in order for the Board members to receive the comments in their packets for review before the rule hearing. Persons wishing to present their comments at the hearing will need nine (9) copies of any comments or proposed changes for distribution to the Board and staff at the hearing.

A regular board meeting will follow the rule hearing during which action will be taken on the proposed rules. During the regular meeting, the Board may enter into Executive Session to discuss licensing matters.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

**NEW MEXICO  
DEPARTMENT OF  
TRANSPORTATION**

**THE NEW MEXICO DEPARTMENT  
OF TRANSPORTATION**

**NOTICE OF ADDITIONAL PUBLIC  
HEARING**

The New Mexico Department of Transportation (NMDOT) will hold an additional public hearing for the purpose of receiving oral and written public comment on Rule Number 18.21.5 NMAC, New Mexico Department of Transportation Outdoor Advertising Requirements. The purpose of the proposed rule change is to establish

procedures and standards for all off-premises outdoor advertising in New Mexico, including the use of changeable electronic variable message signs, to amend the current fee structure, to update and clarify the rule where necessary, including definitions and permit-related processes, to correct inconsistencies with federal regulations, and to make formatting, organizational and language changes throughout the rule to conform to New Mexico rulemaking requirements.

Two prior hearings were held on October 18, 2013 in Albuquerque, New Mexico, and on October 21, 2013 in Las Cruces, New Mexico. A third hearing is scheduled for December 2, 2013 from 10:00 am to 12:00 p.m. at the New Mexico

Department of Transportation, General Office, Training Room 1, located at 1120 Cerrillos Road, Santa Fe, New Mexico. The hearing will be held before Elias Archuleta, NMDOT Acting Chief Engineer. Please contact Michael Otero, Outdoor Advertising Program Manager, New Mexico Department of Transportation, P.O. Box 1149, SB 4, 2<sup>nd</sup> Floor, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5460, to request a copy of the rule.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Michael Otero at (505) 827-5460 at least ten (10) days before the scheduled hearing.

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**End of Notices and Proposed  
Rules Section**

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## Adopted Rules

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

20.2.98 NMAC, Air Quality (Statewide)  
- Conformity of General Federal Actions  
to the State Implementation Plan (filed  
10/16/2002) repealed 11/25/13.

### NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.2 NMAC,  
Sections 8 and 9, effective October 31, 2013.

#### 19.31.2.8 REVOCATION CATEGORIES AND TIMEFRAME:

**A. Points:** Any person with 20 or more points accumulated within any consecutive three-year period, shall have all of his or her hunting, fishing, trapping, guiding and outfitting privileges, or other privileges or authorities (granted by an agreement, license, permit or certificate issued) under Chapter 17 NMSA 1978 and its implementing rules subject to revocation or suspension.

**B. Guide and outfitter:**  
A registered outfitter or guide who violates any provision of Section 17-2A-3, or 17-3-16 and their implementing rules not already addressed in this section shall be assessed points towards the revocation or suspension of their guide and or outfitting registration as follows:

- (1) 20 points:
  - (a) violation of conditions of registration;
  - (b) misrepresentation or failure to disclose;
  - (c) aiding, concealing or willfully allowing violations of applicable laws by a hunter-client.
- (2) 10 points:
  - (a) failure to provide sufficient guides or guiding services;
  - (b) failure to properly supervise guides;
  - (c) unregistered services;
  - (d) failure to comply with any local, state, or federal laws;
  - (e) breach of contract;
  - (f) failure to provide a signed contract;
  - (g) failure to report illegal activity.
- (3) 5 points: Any outfitter and guide misconduct not otherwise specifically listed herein.

(4) Guides and outfitters shall be notified when points are assessed.

**C. Landowner contracts and agreements:** A landowner's privilege

to participate in a department-sponsored private land program may be revoked for breach or violation of the conditions of a contract or agreement with the department. The landowner shall be afforded with notice and opportunity for a hearing in accordance with the process for revocation as set forth in this rule.

**D. Timeframe:** 17-1-14 B. (11) NMSA 1978 provides that the commission shall establish procedures for the suspension, revocation, or withholding of license privileges for a definite period of time.

(1) Any person found to [be] have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17, its implementing rules, or Section 30-14-1 NMSA 1978, after notice and opportunity to be heard by a hearing officer, shall have his or her license, permit [or], certificate, and privilege to hold such, revoked for up to three years, unless otherwise provided for by law. [Any person found to not comply with a department sponsored private lands agreement shall have his or her private lands program privileges revoked for up to three years.]

(2) Any person, who, after having had their privileges revoked, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 or its implementing rules, for a second time, after notice and opportunity to be heard by a hearing officer, shall have his or her license, permit, certificate, and privilege to hold such, revoked for up to five years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

(3) Any person, who, after having had their privileges revoked for a second time, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 or its implementing rules, for a third or subsequent time, shall have his or her license, permit, certificate, and privilege to hold such, revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

(4) Any person found to have taken or killed a bighorn sheep, ibex, oryx, barbary sheep, elk, deer, or pronghorn antelope, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, shall have his or her license, permit, certificate, and privilege to hold such, revoked for up to seven years, unless otherwise provided for by law.

(5) Any person found to have taken

or killed a bighorn sheep, ibex, oryx, barbary sheep, elk, deer, or pronghorn antelope, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, for a second or subsequent time, shall have his or her license, permit, certificate, and privilege to hold such, revoked for up to ten years, unless otherwise provided for by law.

(6) Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, shall have his or her license, permit, certificate, and privilege to hold such, revoked for up to five years, unless otherwise provided for by law.

(7) Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, for a second or subsequent time, shall have his or her license, permit, certificate, and privilege to hold such, revoked for up to seven years, unless otherwise provided for by law.

(8) Any person found to not comply with a department sponsored private lands agreement shall have his or her private lands program privileges revoked for up to three years.

(9) Any person not in compliance with the Parental Responsibility Act (Section 40-5A-1 NMSA 1978) or the Wildlife Violator Compact (Section 11-16-1 NMSA 1978) shall have his or her license, permit, certificate, and privilege to hold such, revoked or suspended for the timeframe designated and allowed by law.

(10) The commission may revoke a person's license, permit, certificate, and privilege to hold such, for any definite period of time they deem appropriate if they determine that the person has committed a flagrant or egregious violation of Chapter 17 or its implementing rules.

[19.31.2.8 NMAC - Rp, 19.31.2.8 NMAC, 09-14-2012; A, 10-31-2013]

#### 19.31.2.9 P O I N T

**CATEGORIES:** The violations listed below are each assigned specific point values which count toward the revocation of a license, permit or certificate and the suspension of associated privileges when 20 or more points are accrued in a period of three consecutive years.

**A. 20-point violations:**  
Any person violating any of the following provisions shall be assessed 20 points:

(1) illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33;

(2) except as otherwise provided by Sections 17-2-37 to 17-2-46, taking,

possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered species or the United States' list of endangered native and foreign fish and wildlife;

(3) any violation of Section 17-3-6;

(4) selling, offering for sale, offering to purchase or purchasing any game animal, game bird or protected species, in violation of Section 17-2-7;

(5) hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31;

(6) hunting big game outside the ranch boundaries for which a ranch-only license is issued or otherwise hunting big game in the wrong area, in violation of Section 17-2-7;

(7) criminal trespass, in violation of Section 30-14-1, when in connection with hunting, fishing or trapping activity; revocation to be for three years;

(8) for violations of Section 17-2-29, involving hunting or boating while intoxicated (revocation for a period of one year, as prescribed by Section 17-2-30);

(9) buying of licenses, permits certificates or registration without sufficient funds to pay for same;

(10) any violation of Section 17-3-48, provided that any revocation under this section shall commence consecutively to any current revocation;

(11) guiding or outfitting without being registered in violation of Section 17-2A-3;

(12) using an outfitter or guide license issued to another;

(13) hunting big game without a license;

(14) any violation of Section 17-3-49;

(15) any violation of Section 17-2-7.1;

(16) any person submitting, or allowing to be submitted for them, false or fraudulent harvest reporting information as required by rule;

(17) flagrant violation of the provisions of any special use of wildlife permit issued by the department pursuant to Chapter 17 NMSA 1978 and its implementing rules;

(18) unlawfully taking amphibians and reptiles for commercial purposes, without a permit, in violation of Section 17-2-4.2;

(19) knowingly or willfully introducing an aquatic invasive species, in violation of Section 17-4-35;

(20) accessory to any of the above.

**B. 15-point violations:**

Any person violating any of the following provisions shall be assessed 15 points:

(1) shooting at any protected

species from a vehicle;

(2) shooting at any protected species from a roadway, as provided in rule;

(3) illegally taking, attempting to take, killing, capturing or possessing any turkey outside of hunting season in violation of Section 17-2-7 or 17-3-33;

(4) any violation of Section 17-2-8, except as otherwise provided for in Subsection D of 19.31.2.8 NMAC;

(5) unlawfully using dogs while hunting big game or turkey;

(6) importation of any species in violation of Section 17-3-32 without a permit;

(7) any violation of Section 17-3-45;

(8) accessory to any of the above violations.

**C. 10-point violations:**

Any person violating any of the following provisions shall be assessed [15] 10 points:

(1) hunting in a closed area;

(2) exceeding the bag limit of game;

(3) illegal possession of fish;

(4) exceeding the bag limit on fish;

(5) fishing by an illegal method;

(6) procurement or possession of additional deer license, except as provided by rule;

(7) illegally taking, attempting to take, killing, or capturing of any big game species or turkey during hunting season;

(8) illegal possession of any big game species or turkey during hunting season;

(9) hunting turkey or small game without a license;

(10) hunting, taking or attempting to take protected game, game fish, or furbearers on private land, without written permission, in violation of Chapter 17 NMSA 1978 and its implementing rules;

(11) accessory to any of the above violations.

**D. 7-point violations:**

Any person fishing without a license shall be assessed seven points.

**E. 5-point violations:** Any person violating any provision of Chapter 17 NMSA 1978 and its implementing rules not specifically listed herein, except for violations of Section 17-2A-3 and its implementing rules shall be assessed five points.

[19.31.2.9 NMAC - Rp, 19.31.2.9 NMAC, 09-14-2012; A, 10-31-2013]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an amendment to 19.31.10 NMAC, Sections 9 and 20, effective October 31, 2013.

**19.31.10.9 POSSESSION OR SALE OF PROTECTED SPECIES:** It shall be unlawful to possess, sell, or offer for sale all or part of any protected species except as provided below:

**A. License or permit:** A person may possess protected species or parts thereof that they have lawfully taken (killed) under a license or permit.

**B. Game taken by another:** Any person may have in their possession or under their control any protected species or parts thereof that have been lawfully taken by another person, if they possess a written statement which shall be provided by the donor of the protected species, or parts thereof, and which shall contain the following:

(1) the kind and number of game or furbearer parts donated;

(2) the date and county where the game or furbearer was lawfully taken;

(3) the donor's name, address, and the number of the hunting or fishing or trapping license under which the game or furbearer was lawfully taken;

(4) the date and place of the donation.

**C. Retention of live animals:** It shall be unlawful to retain protected species in a live condition except under permit or license issued by the director for the following purposes:

(1) zoos open for public display;

(2) in class A parks;

(3) in projects for scientific research and propagation;

(4) a rehabilitation permit;

(5) under a falconry permit, only those birds listed on the permit;

(6) under a protected mammal permit, only those mammals listed on the permit;

(7) under a scientific collection permit, one may collect and possess only those species listed on the permit;

(8) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the protected animal being transported.

**D. Sale of game animal parts:** Only skins, heads, antlers, horns, or claws of legally taken protected species and feathers from non-migratory game birds may be bartered or sold. (Internal organs of protected species may not be sold). The disposer must supply to the recipient a written statement which shall contain the following:



(1) description of the skin, head, antlers, horns or claws, or feathers involved;

(2) the date and county where the game was taken;

(3) the disposer's name, address and hunting license number under which the game was taken;

(4) the date and place of the transaction.

**E. Possession of game animal parts found in the field:** It shall be unlawful to possess heads, horns, or antlers of protected species found in the field without invoice or permit from the department of game and fish, with the exception of obviously shed antlers.

**F. Big game and turkey:** For licensed hunters of any big game species or turkey, the licensee killing the animal shall immediately punch or completely fill in (black out) the area designated for the appropriate species on the license. Immediately upon arriving at a vehicle, camp or a place of storage, the licensee must permanently fill in the proper date and time of kill on their license.

(1) The properly punched or blacked-out license shall be attached or accompany the carcass while the carcass is left unattended in any vehicle, field, or while it is in camp or at a residence or other place of storage. The punched or blacked-out license may be removed from the carcass while the carcass is being removed from the field to a camp or vehicle. In situations where numerous trips are required to remove the carcass from the field, the punched or blacked-out license shall remain attached to that portion of the carcass left unattended in a camp or vehicle.

(2) Once removed from the field, the licensee must ensure the carcass or parts thereof are accompanied by a properly filled out and punched or blacked-out license or other license information as determined by the director.

(3) It shall be unlawful for any licensee to fail to properly punch or completely black out the area designated by appropriate species on the license immediately upon killing any big game species or turkey.

(4) It shall be unlawful for any licensee for any big game or turkey to fail to properly fill in the date and time of kill on their license as required by rule.

(5) It shall be unlawful to possess any big game species or turkey that are unaccompanied by a properly punched, blacked-out or filled out license or unaccompanied by the other license information as determined by the director.

(6) It shall be unlawful for any person to transport or possess the carcass of any big game animal or turkey without proof of sex until the carcass arrives at a residence, taxidermist, meat processing

facility, place of final storage or if required, is inspected and documented or pelt tagged by a department official.

**G. Possession and sale of live wild turkey prohibited:** It shall be unlawful to sell, attempt to sell or possess wild turkey (*Meleagris gallopavo* ssp.) in New Mexico, including captive raised birds, except as by permit issued by the director for verifiable scientific, education, and temporary purposes or for commercial sales to entities outside of the state of New Mexico.

**[G.] H. Seizure:** Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcass of any protected species that is possessed contrary to this section.  
[19.31.10.9 NMAC - Rp, 19.31.10.9 NMAC, 4-1-2007; A, 10-31-2013]

**19.31.10.20 DIRECTOR'S AUTHORITY TO ACCOMMODATE DISABILITY OR MEDICAL IMPAIRMENT:** The director may authorize reasonable modifications to the manner and method of take for any licensee who has a verifiable medical condition that, in the director's sole discretion, necessitates such accommodation. In order to apply for such accommodation, the licensee shall complete and submit any form, information and records required by the director. Any licensee granted an accommodation must adhere to all other rules as to manner and method of take that are not specifically waived by such accommodation; and shall adhere to any restrictions imposed by the director.  
[19.31.10.20 NMAC - N, 10-31-2013]

**NEW MEXICO HIGHER EDUCATION DEPARTMENT**

**TITLE 5 POST-SECONDARY EDUCATION  
CHAPTER 7 TUITION AND FINANCIAL AID  
PART 4 PRIMARY CARE PHYSICIAN STUDENT LOAN-FOR-SERVICE PROGRAM**

**5.7.4.1 ISSUING AGENCY:** State of New Mexico Higher Education Department  
[5.7.4.1 NMAC - N, 10/31/2013]

**5.7.4.2 SCOPE:** Provisions of 5.7.4 NMAC apply to New Mexico residents that are selected to participate in primary care physician loan for service program described in this rule. Participants must be pursuing a medical doctor degree in with the intent to serve as primary care physician in an underserved area.

[5.7.4.2 NMAC - N, 10/31/2013]

**5.7.4.3 STATUTORY AUTHORITY:** Sections 9-25-8, 21-1-26 and 21-22G-1 through 21-22G-4, NMSA 1978.

[5.7.4.3 NMAC - N, 10/31/2013]

**5.7.4.4 DURATION:** December 31, 2019.

[5.7.4.4 NMAC - N, 10/31/2013]

**5.7.4.5 EFFECTIVE DATE:** October 31, 2013, unless a later date is cited at the end of a section.

[5.7.4.5 NMAC - N, 10/31/2013]

**5.7.4.6 OBJECTIVE:** The objective and purpose of 5.7.4 NMAC is to increase the number of primary care physicians in underserved areas of the state, by making educational loans to medical students seeking to become primary care physicians. The program requires, as a condition of each loan, that the student declare the intent to practice as a primary care physician within one of the counties of the state designated by the U.S. department of health and human services as having a shortage of primary care physicians.  
[5.7.4.6 NMAC - N, 10/31/2013]

- 5.7.4.7 DEFINITIONS:**
- A. **"Course of study"** means a medical student's medical education, including residency program.
  - B. **"Department"** means New Mexico higher education department.
  - C. **"Extenuating circumstances"** means circumstances not within the control of the recipient.
  - D. **"Fund"** means the primary care physician loan for service fund.
  - E. **"Loan"** means a grant of funds or waiver to defray the educational expenses of medical school, under a contract between the department and a student, requiring repayment with services or repayment of principal and interest and any fees.
  - F. **"Participant"** means an individual that has applied to participate in, has been accepted into and has signed a contract agreeing to the terms of the program.
  - G. **"Primary care physician"** means a medical doctor with specialty training in family medicine, general internal medicine or general pediatrics.
  - H. **"Program"** means the primary care physician student loan for service program.
  - I. **"Residency"** means three years of specialty training in family medicine, general internal medicine or general pediatrics after medical school.
  - J. **"Secretary"** means the

secretary of higher education.

K. **“Service”** means full-time, on-site practice area as a primary care physician.

L. **“Student”** means a student who is a resident of New Mexico and is enrolled at least half-time in, or has been accepted by a university for medical school.

M. **“Underserved area”** means a health care underserved area as defined in the Rural Primary Health Care Act (24-1A-1 NMSA 1978).

N. **“University”** means the university of New Mexico school of medicine.

[5.7.4.7 NMAC - N, 10/31/2013]

**5.7.4.8 STUDENT ELIGIBILITY:** To be eligible for this program, a student must:

A. be pursuing a medical degree, and enrolled in or accepted by the university;

B. be enrolled at the time the loan is awarded and disbursed in a program leading to a medical degree at the university.

C. be a resident of New Mexico and either a graduate of a New Mexico high school or a graduate of a New Mexico college or university; and

D. declare his/her intent to practice as a primary care physician for at least one year, not to exceed five years, with year to year renewal within an underserved area.

[5.7.4.8 NMAC - N, 10/31/2013]

**5.7.4.9 SELECTION OF LOAN RECIPIENTS:** The department shall select participants according to rules it promulgates and, in consultation with the university, shall create a standard process for medical students to declare their intentions to be primary care physicians and to apply to participate in the program. The department shall select loan recipients based on the following considerations and preferences:

A. the ability, character, and qualifications of each applicant; this is to include:

(1) review of the applicant's educational transcripts,

(2) letters of recommendation from educational and medical field professionals, and

(3) references;

B. the demonstrated interest of the applicant in serving in an underserved area;

C. an underserved area endorsement of the applicant; and

D. an applicant seeking to obtain a medical degree in a New Mexico certified/accredited program.

[5.7.4.9 NMAC - N, 10/31/2013]

**5.7.4.10 RESPONSIBILITIES OF THE DEPARTMENT:** The department shall:

A. promulgate rules for implementing the program in consultation with the university;

B. publicize the program to medical students and to prospective medical students;

C. collect and manage repayments from students who do not meet their obligations under the program;

D. solicit and accept funds for the program, including grants and donations;

E. award no more than 10 new loans a year, in addition to renewing existing waivers for eligible participants, subject to the availability of funding;

F. promulgate rules setting the maximum amount of the reasonable living stipend. The department shall determine the maximum amount of the living stipend based upon the availability of funds and information provided by the university regarding the current cost of attendance at the school of medicine;

G. for a period of no more than five years, allow participants to remain in the program and receive continued loans in accordance with the availability of funds and the department's finding that the participant is meeting the university's standards for satisfactory academic progress;

H. shall award loans to participants from the fund. Approve the amount of the loan granted to a participant. The amount of the loan awarded to a participant shall not exceed a reasonable living stipend plus the amount of resident tuition and fees that a participant incurs.

[5.7.4.10 NMAC - N, 10/31/2013]

**5.7.4.11 LOANS:** Loans can be made to students to defray educational expenses incurred in obtaining a medical degree under the following conditions and limitations:

A. the amount is dependent upon relative need of each student, but may not exceed \$30,000 per academic year;

B. upon approval of the loan, a contract shall be drawn between the student and the department and signed by the student and the department;

C. a student may receive a loan on the following terms:

(1) interest shall accrue upon termination of the participant's course of study; the waiver amount shall bear interest at the rate of 18% per year if the participant completes a course of study and no portion of the principal and interest is forgiven pursuant to Subsection D of this section; and

(2) the maximum period for repayment shall be 10 years, commencing six months from the date the participant

completes or discontinues the course of study, including a residency; and

D. the contract shall provide that the department forgive a portion of the waiver for each year that a participant practices as a primary care physician in an underserved area of New Mexico as defined in the Rural Primary Health Care Act (24-1A-1 NMSA 1978).

[5.7.4.11 NMAC - N, 10/31/2013]

**5.7.4.12 LOAN REPAYMENT AND FORGIVENESS:** All loans shall be repaid to the state together with interest or forgiven.

A. the loan shall be forgiven as follows:

(1) a loan term of one year shall require one year of practice as a primary care physician in an underserved area of the state for the one-year term of the loan received. Upon completion of service, 100% of the loan and accrued interest shall be forgiven;

(2) a loan term of two years shall require two years of practice as a primary care physician in an underserved area of the state for the two-year term of the loan received. Upon completion of the first year of service, 50% of the loan and accrued interest shall be forgiven; upon completion of the second year of service, the remainder of the loan and accrued interest shall be forgiven;

(3) a loan term of three years shall require three years of practice as a primary care physician in an underserved area of the state for the three-year term of the loan received. Upon completion of the first year of service, 25% of the loan and accrued interest shall be forgiven; upon completion of the second year of service, 50% of the loan and accrued interest shall be forgiven; and upon completion of the third year of service, the remainder of the loan and accrued interest shall be forgiven;

(4) a loan term of four years shall require four years of practice as a primary care physician in an underserved area of the state for the four-year term of the loan received. Upon completion of the first year of service, 30% of the loan and accrued interest shall be forgiven; upon completion of the second year of service, 40% of the loan and accrued interest shall be forgiven; upon completion of the third year of service, 50% of the loan and accrued interest shall be forgiven; and upon completion of the fourth year of service, the remainder of the loan and accrued interest shall be forgiven; or

(5) a loan term of five years shall require five years of practice as a primary care physician in an underserved area of the state for the five-year term of the loan received. Upon completion of the first year of service, 10% of the loan and accrued interest shall be forgiven; upon completion of the second year of service, 20% of the loan and accrued

interest shall be forgiven; upon completion of the third year of service, 30% of the loan and accrued interest shall be forgiven; upon completion of the fourth year of service, 50% of the loan and accrued interest shall be forgiven; and upon completion of the fifth year of service, the remainder of the loan and accrued interest shall be forgiven;

B. in the event that a participant completes the participant's course of study and does not meet the program obligation to serve as a primary care physician in an underserved area of the state, the department shall assess a penalty of up to three times the principal due, plus 18% interest, unless the department finds acceptable extenuating circumstances for why the participant cannot serve. The department shall collect the penalty and remit it to the state treasury for deposit in the fund;

C. the department is authorized to cancel any contract made between it and any participant pursuant to the Conditional Tuition Waiver for Primary Care Medical Students Act, or set terms of alternative service in lieu of monetary repayment, for any cause the department deems reasonable;

D. the department shall be responsible for collecting repayments made pursuant to this section and shall exercise due diligence in collecting repayments and maintaining all necessary records to ensure that full repayments are made. The department shall collect and service repayments under this section to the full extent of the law, including wage garnishment where practicable. The department shall forgive all or parts of repayments under the criteria established in this section and shall maintain all necessary records of repayments it forgives; and

E. when a participant makes payment of principal or interest to the department pursuant to the provisions of this section, the department shall deposit these payments into the fund and shall use these payments to cover the costs of granting waivers and the administrative expenses associated with the program and collection activity on its behalf. The department shall maintain accurate records of these expenses, and all receipts beyond those necessary to pay these expenses shall be used to grant waivers to participants.

[5.7.4.12 NMAC - N, 10/31/2013]

**5.7.4.13 CONTRACTS:** A contract shall be drawn between each student receiving a loan and the department on behalf of the state of New Mexico. The contract shall:

A. provide for the payment by the department of a specified sum as determined in Section 5.7.4.12 NMAC;

B. state that the borrower

shall select from the list of underserved areas at the time he/she is ready to begin service;

C. state that immediately upon completion or termination of the student's eligible medical degree education, to include residency, the loan shall become due;

D. state the conditions of repayment or forgiveness as detailed in Section 5.7.4.12 NMAC;

E. state that the loan shall bear interest at the designated rate per annum from the date of default until paid, making provision for conversion to a payout note, and state that interest will be charged on the unpaid balance of the principal only;

F. state the legal responsibilities of the borrower and that delinquent loans shall be referred to the department for appropriate action, which may include referral to the office of the attorney general, if deemed necessary;

G. state that the borrower's obligations of the contract with the department shall be binding on borrower's estate;

H. state that the department may cancel any contract on 30 days written notice for any reasonable and sufficient cause;

I. state that in the event the borrower fails to make any payment when due, the entire indebtedness including interest due and accrued thereon shall, at the option of the department, become immediately due and payable; and

J. state that jurisdiction and venue shall be proper in Bernalillo or Santa Fe county, New Mexico for purposes of any suit to enforce the contract.

[5.7.4.13 NMAC - N, 10/31/2013]

**5.7.4.14 REPORTS:** The department shall submit a report to the governor and the legislature prior to each regular legislative session. The report shall describe the activities during the previous years, including the statistics, and analysis of the progress of the program in meeting the health and medical needs of the citizens of the state.

[5.7.4.14 NMAC - N, 10/31/2013]

**HISTORY OF 5.7.4 NMAC:** [RESERVED]

**NEW MEXICO HIGHER EDUCATION DEPARTMENT**

**TITLE 5 POST-SECONDARY EDUCATION  
CHAPTER 7 TUITION AND FINANCIAL AID  
PART 5 TEACHER LOAN REPAYMENT PROGRAM**

**5.7.5.1 ISSUING AGENCY:** State of New Mexico Higher Education Department

[5.7.5.1 NMAC - N, 10/31/2013]

**5.7.5.2 SCOPE:** Provisions for 5.7.5 NMAC apply to certain education professionals that are selected to participate in the loan repayment program described in this rule.

[5.7.5.2 NMAC - N, 10/31/2013]

**5.7.5.3 STATUTORY AUTHORITY:** Sections 9-25-8, 21-1-26 and 21-22H-1 through 21-22H-9, NMSA 1978.

[5.7.5.3 NMAC - N, 10/31/2013]

**5.7.5.4 DURATION:** Permanent.

[5.7.5.4 NMAC - N, 10/31/2013]

**5.7.5.5 EFFECTIVE DATE:** October 31, 2013, unless a later date is cited at the end of a section.

[5.7.5.5 NMAC - N, 10/31/2013]

**5.7.5.6 OBJECTIVE:** The objective and purpose of 5.7.5 NMAC is to increase the number of teachers in designated high-risk teacher positions in public schools through an educational loan repayment program. The program provides for repayment of the principal and reasonable interest accrued on loans obtained from the federal government for teacher education purposes.

[5.7.5.6 NMAC - N, 10/31/2013]

**5.7.5.7 DEFINITIONS:**  
A. **"Department"** means the New Mexico higher education department.

B. **"Designated high-risk teacher positions"** means teacher positions in specific public schools that:

(1) have been designated by the public education department as schools with a high percentage of students who are not meeting acceptable academic proficiency levels; and

(2) are located in geographic areas with a high rate of poverty;

C. **"Loan"** means a grant of funds to defray the educational expenses incidental to a teacher education, under a contract between the federal government and a teacher, requiring repayment of principal and interest.

[5.7.5.7 NMAC - N, 10/31/2013]

**5.7.5.8 HIGHER EDUCATION DEPARTMENT - POWERS AND DUTIES**

A. The department may grant a loan repayment award to repay loans obtained for the teacher educational

expenses of a teacher upon such terms and conditions as may be imposed by rules of the department.

B. The department and the public education department shall jointly make a full and careful investigation of the ability and qualifications of each applicant and determine the fitness of a teacher to participate in the teacher loan repayment program.

[5.7.5.8 NMAC – N, 10/31/2013]

#### **5.7.5.9 TEACHER ELIGIBILITY**

A. Applicants shall be:

(1) licensed New Mexico teachers and shall be bona fide citizens; and

(2) shall be bona fide citizens and residents of the United States and New Mexico.

B. Applicants shall declare their intent to practice as teachers in designated high-risk teacher positions in the state.

[5.7.5.9 NMAC – N, 10/31/2013]

#### **5.7.5.10 LOAN REPAYMENT AWARD CRITERIA; CONTRACT TERMS; PAYMENT**

A. Loan repayment award criteria shall provide that:

(1) award amounts shall be dependent upon a specific public school's need for the designated high-risk teacher position, as determined by the public education department, the teacher's total teacher education indebtedness and available balances in the teacher loan repayment fund;

(2) preference in making awards shall be to teachers who have graduated from a New Mexico public postsecondary educational institution;

(3) awards shall be made to eligible teachers who fill a designated high-risk teacher position;

(4) award amounts may be modified based upon funding availability or other special circumstances; and

(5) the total amount of awards made to any one teacher shall not exceed the total teacher education indebtedness of that teacher.

B. The following teacher education debts are not eligible for repayment pursuant to the Teacher Loan Repayment Act:

(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) loans from a commercial lender;

(4) personal loans from friends or relatives; and

(5) loans that exceed individual standard school expense levels.

C. Every loan repayment award shall be evidenced by a contract between the teacher and the department acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum to the teacher's federal government lender and shall state the obligations of the teacher under the program, including a minimum two-school-year period of service in a designated high-risk teacher position, quarterly reporting requirements and other obligations established by the department.

D. Teachers who serve a complete school year in a designated high-risk teacher position shall receive credit for one year for the purpose of calculating any loan repayment award amounts. The minimum loan repayment award amount to be paid for each school year completed shall be established by the department.

E. The contract between a teacher and the department shall provide that, if the teacher does not comply with the terms of the contract, the teacher shall reimburse the department for all loan payments made on the teacher's behalf, plus reasonable interest at a rate to be determined by the department, unless the department finds acceptable extenuating circumstances for why the teacher cannot serve or comply with the terms of the contract.

F. Loan repayment awards shall be in the form of payments from the teacher loan repayment fund directly to the federal government lender of a teacher who has received the award and shall be considered a payment on behalf of the teacher pursuant to the contract between the department and the teacher. A loan repayment award shall not obligate the state or the department to the teacher's federal government lender for any other payment and shall not be considered to create any privity of contract between the state or the department and the lender.

G. The department, after consulting with the public education department, shall adopt rules to implement the provisions of the Teacher Loan Repayment Act. The rules:

(1) shall provide a procedure for determining the amount of a loan that will be repaid for each year of service in a designated high-risk teacher position; and

(2) may provide for the disbursement of loan repayment awards to a teacher's federal government lender in annual or other periodic installments.

[5.7.5.10 NMAC – N, 10/31/2013]

#### **5.7.5.11 CONTRACTS AND ENFORCEMENT**

A. The general form of a contract required pursuant to the Teacher

Loan Repayment Act shall be prepared and approved by the attorney general, and each contract shall be signed by the teacher and the designated representative of the department on behalf of the state.

B. The department is vested with full and complete authority and power to sue in its own name for any balance due the state from a teacher under any such contract.

[5.7.5.11 NMAC – N, 10/31/2013]

#### **5.7.5.12 TEACHER LOAN REPAYMENT FUND CREATED AND METHOD OF PAYMENT**

A. The "teacher loan repayment fund" is created in the state treasury. All money appropriated for the teacher loan repayment program shall be credited to the fund, and any repayment of awards and interest received by the department shall be credited to the fund. Income from the fund shall be credited to the fund, and balances in the fund shall not revert to any other fund. Money in the fund is appropriated to the department for making loan repayment awards pursuant to the Teacher Loan Repayment Act.

B. All payments for loan repayment awards shall be made upon vouchers signed by the designated representative of the department and upon a warrant issued by the secretary of finance and administration.

[5.7.5.12 NMAC – N, 10/31/2013]

#### **5.7.5.13 CANCELLATION:**

The department may cancel any contract made between it and a teacher pursuant to the Teacher Loan Repayment Act for any reasonable cause deemed sufficient by the department.

[5.7.5.13 NMAC – N, 10/31/2013]

#### **5.7.5.14 REPORTS:**

Prior to each regular session of the legislature, the department shall make annual reports to the governor and the legislature of the department's activities pertaining to the Teacher Loan Repayment Act; the loan repayment awards granted; the names and addresses of teachers who received loan repayment awards; the names and locations of the positions filled by those teachers; and the name of each teacher who received a loan repayment award who is not serving in a designated high-risk teacher position, the reason the teacher is not serving in a designated high-risk teacher position, the amount owed on the teacher's loan and the amount paid on the teacher's loan by any loan repayment awards.

[5.7.5.14 NMAC – N, 10/31/2013]

**HISTORY OF 5.7.5 NMAC: [RESERVED]**

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

*This is an amendment to 5.7.9 NMAC, Section 8, effective 10/31/2013*

### 5.7.9.8 STUDENT ELIGIBILITY:

A. First year eligibility. A scholarship may be awarded to a New Mexico high school graduate who:

(1) is a citizen of the United States or an eligible non-citizen and resident of New Mexico as defined in 5.7.18.9 NMAC;

(2) will graduate or has graduated from a New Mexico high school and who enrolls in an eligible institution by the end of his twenty-first year provided that the graduate meets the resident requirements defined in 5.7.18.9 NMAC;

(3) has met the admission requirements and is accepted for enrollment as a full-time undergraduate student at an eligible institution;

(4) has maintained a level of performance in high school reflected by a junior or senior score or placement level of:

(a) a composite score of at least twenty-five on the American college test (ACT) or a total of at least one thousand one hundred and forty on the scholastic aptitude test (SAT); or

(b) top five percent of the student's high school graduating class in either the student's junior or senior year;

(5) has a total combined family income of no more than [~~thirty thousand dollars (\$30,000)~~] sixty thousand dollars (\$60,000) per year in either of the calendar years ending within the student's junior or senior years in high school; in the case of a student whose immediate family has more than one family member enrolled full-time in an eligible institution of post-secondary education, the total combined family income shall be an amount as determined by the department as of August 19, 1991; and

(6) has complied with all the rules and regulations adopted by the department for award of the scholarship and the provisions regarding the administration of scholarships adopted pursuant to the New Mexico Scholars Act.

B. Continuing eligibility. A New Mexico scholars award may be re-awarded to a student who:

(1) maintains satisfactory academic progress as defined in these rules and regulations;

(2) stays enrolled for consecutive academic years.

[7/15/98; 5.7.9.8 NMAC - Rn & A, 5 NMAC 7.9.8, 8/30/2007; A, 10/31/2013]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

*This is an amendment to 5.7.31 NMAC, Section 9, effective 10/31/2013*

### 5.7.31.9 LOAN REPAYMENT PROGRAM ELIGIBILITY AND AWARD CRITERIA

A. An applicant shall be licensed to practice in New Mexico as an attorney and shall declare intent to practice as an attorney in public service employment.

B. Prior to submitting an application to the public service law loan repayment program, an applicant shall apply to all available legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies.

C. An applicant who intends to practice as an attorney in a public service employment position that earns more than [~~forty-five thousand dollars (\$45,000)~~] fifty-five thousand dollars (\$55,000) per year is not eligible for participation in the public service law loan repayment program.

D. Prior to receiving a loan repayment award, the applicant shall file with the department:

(1) a declaration of intent to practice as an attorney in public service employment;

(2) proof of prior application to all legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies; and

(3) documentation that includes the applicant's total legal education debt, salary, any amounts received by the applicant from other law loan repayment programs and other sources of income deemed by the department as appropriate for consideration; provided that the applicant shall not be required to disclose amounts of income from military service.

E. Award criteria shall provide that:

(1) preference in making awards shall be to applicants who:

(a) have graduated from the university of New Mexico law school;

(b) have the greatest financial need based on legal education indebtedness and salary;

(c) work in public service employment that has the lowest salaries; and

(d) work in public service employment in underserved areas of New Mexico that are in greatest need of attorneys practicing in public service employment;

(2) an applicant's employment as an attorney in public service employment prior to participation in the public service law loan repayment program shall not count as time spent toward the minimum three-

year period of service requirement pursuant to the contract between the participating attorney and the department acting on behalf of the state;

(3) award amounts are dependant upon the applicant's total legal education debt, salary and other sources of income, other than income from military service, deemed by the department as appropriate for consideration;

(4) award amounts may be modified based upon available funding or other special circumstances;

(5) an award shall not exceed the total legal education debt of any participant; and

(6) award amounts shall be reduced by the sum of the total award amounts received by the participant from other legal education loan repayments programs.

F. The following legal education debts are not eligible for repayment pursuant to the Public Service Law Repayment Program:

(1) amounts incurred as a result of participation in state or law school loan-for-service programs or other state or law school programs whose purposes state that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from relatives or friends; and

(4) loans that exceed individual standard school expense levels;

(5) an award determination may be appealed to the secretary of higher education. [5.7.31.9 NMAC - N, 12/31/2007; A, 5/30/2008; A, 10/31/2013]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

**The Human Services Department – Income Support Division, repeals its rule 8.119.600 NMAC entitled Description of Program/Benefits - General Program Description, effective 11-01-2013.**

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

**TITLE 8 SOCIAL SERVICES  
CHAPTER 119 REFUGEE  
RESETTLEMENT PROGRAM  
PART 100 RECIPIENT  
POLICIES-DEFINITIONS AND  
ACRONYMS**

**8.119.100.1 ISSUING AGENCY:**  
New Mexico Human Services Department.  
[8.119.100.1 NMAC – N, 11/01/2013]

**8.119.100.2 SCOPE:** The rule applies to the general public.  
[8.119.100.2 NMAC – N, 11/01/2013]

**8.119.100.3 S T A T U T O R Y AUTHORITY:**

**A.** The Refugee Resettlement Program (RRP) is authorized under Title IV of the Immigration and Nationality Act of 1980. The act designates the federal department of health and human services (DHHS) as the federal administering agency. RRP regulations are issued by DHHS in the code of federal regulations, Title 45, Part 400, which is supplemented by administrative and program instructions issued by the federal department from time to time.

**B.** In accordance with authority granted to the department by NMSA 1978, section 27-1-3(J), and pursuant to Executive Order No. 80-62, dated 10/01/81, the governor of the state of New Mexico has designated the human services department (HSD) as the single state agency responsible for administering the program in New Mexico.

[8.119.100.3 NMAC – N, 11/01/2013]

**8.119.100.4 D U R A T I O N :** Permanent

[8.119.100.4 NMAC – N, 11/01/2013]

**8.119.100.5 EFFECTIVE DATE:** 11/01/2013, unless a later date is cited at the end of a section.

[8.119.100.5 NMAC – N, 11/01/2013]

**8.119.100.6 OBJECTIVE:** The objective of the RRP is to assist refugees to become self-sufficient by providing a program of financial and medical assistance, while supportive services are provided, to ensure the effective resettlement of refugees in the state of New Mexico through programs designed to assist with integration, promotion of economic self-sufficiency, and protecting refugees and communities from infectious diseases and other health related issues. HSD has agreed to administer this program subject to the receipt of federal funds. Under the RRP, sponsor(s) and national voluntary agencies (VOLAGs) work closely with the federal government to coordinate support services authorized under the program. The RRP includes the provision of refugee cash assistance (RCA), refugee medical assistance (RMA), refugee social services (RSS) and additional support services funded by the office of refugee resettlement (ORR).

[8.119.100.6 NMAC – N, 11/01/2013]

**8.119.100.7 DEFINITIONS:**

**A. Definitions A-L:**

**(1) Alien:** means an individual residing in the U.S. who does not hold U.S.

citizenship.

**(2) Application:** means a written request for assistance, on the appropriate ISD form, signed by or on behalf of an individual or family.

**(3) Asylee:** means an individual who while in the U.S. is granted permanent residence under section 208 of the Immigration and Nationality Act (INA) and is unable or unwilling to return to his or her country of origin because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

**(4) Asylee applicant:** means an individual who has applied for, but not yet received, asylum in the U.S. and who is therefore ineligible for the RRP.

**(5) Authorized representative:** means a person aged 18 years or older who is designated, in writing, by the applicant and is sufficiently knowledgeable about the applicant/benefit group's circumstances to complete the application form correctly and represent the benefit group.

**(6) Benefit group:** means an individual or group of individuals authorized to receive cash assistance financed by federal or state funds.

**(7) Case management services:** means the determination of appropriate service(s) to refer a refugee, referral to such services(s), and tracking of the refugee's participation in such services(s).

**(8) Conditional entrant:** means an individual who was admitted to the U.S. under section 203(a)(7) of the INA.

**(9) Cuban/Haitian entrant:** means a citizen of Cuba or Haiti who is admitted to the U.S. under section 212(d)(5) of the INA.

**(10) Date of entry:** means the date established by the department of homeland security as the date a refugee or Cuban/Haitian entrant was lawfully admitted to the U.S. for permanent residence. For asylees it means the date on which asylum was granted.

**(11) Department:** means the human services department.

**(12) Documentation of immigration status:** means documents issued to the individual by DHS or USCIS that identifies the individual's lawful immigration status. The documentation provided by an individual is copied for the case file.

**(13) Earned income:** means cash or payments in-kind that are received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from direct provision of services, goods or property, production of goods, management of property or supervision of services.

**(14) Economic self-sufficiency:** means the ability of a refugee to meet his

or her basic needs without the need for cash assistance.

**(15) Employability plan:** means an individualized written plan for a refugee, registered for employment services, that sets forth a program of services intended to achieve the earliest possible employment of the refugee.

**(16) Employability services:** means services designed to enable an individual to attain employment and to improve the work skills of the individual.

**(17) Form I-94:** means the white arrival/departure card issued by the department of homeland security to each alien entering the U.S. which identifies the date of entry and the immigration status granted to that person.

**(18) Individualized employability plan (IEP):** means a written plan, developed by the refugee and the case manager, or the actions to be taken by an employable refugee to achieve employment and economic self-sufficiency.

**(19) Institution of higher education:** means any educational institution which normally requires a high school diploma or equivalency certificate for enrollment, including but not limited to colleges, universities, and vocational or technical schools at the post-high school level.

**(20) Local affiliate:** means a not-for-profit agency that is affiliated with a national voluntary agency (VOLAG) and has been approved by the U.S. department of state to conduct a refugee resettlement program.

**(21) Local resettlement agency:** means a local affiliate of a VOLAG that has entered into a grant, contract, or cooperative agreement with the U.S. department of state to provide initial reception and placement services to refugees.

**(22) Local sponsor:** means an individual, church, or civic organization that has agreed to assist a refugee to resettle in a specific community.

**B. Definitions M-Z:**

**(1) Match grant:** means a program sponsored by the office of refugee resettlement (ORR) that provided matching funds to voluntary agencies and local affiliates to provide cash assistance and services to refugees for no more than 6 months after their lawful arrival in the U.S.

**(2) Medicaid:** means medical assistance under Title XIX of the Social Security Act, as amended.

**(3) National voluntary agency (VOLAG):** means one of the national resettlement agencies that has entered into a contract, or cooperative agreement with the U.S. department of state or other federal agency to provide for the resettlement of refugees and to oversee the work of a national network or local affiliates.

**(4) Minor unmarried parent:** means an unmarried parent, who is under the age of 18 years, or is age 18 and enrolled in high school.

**(5) New Mexico works:** means the federally funded temporary assistance for needy families (TANF) program that carries a 60 month term limit for adults in the state of New Mexico and requires participation in a variety of job search and skill development activities to maintain eligibility.

**(6) Payment:** means the amount of the cash assistance benefit.

**(7) Reception and placement grant:** means a grant provided by the U.S. department of state or U.S. department of justice that is intended to assist refugees to meet their basic needs during the first 30 to 90 days after admission to the U.S.

**(8) Recipient:** means a person receiving cash assistance benefits.

**(9) Refugee:** means any person who is admitted into the U.S. under section 207 of the INA and is unable or unwilling to return to his or her country of origin because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

**(10) Resources:** tangible assets and property owned by the applicant with the exception of assets and property in the refugee's country of origin and assets and property given to the refugee as part of the reception and placement program.

**(11) Refugee cash assistance (RCA):** means a 100 percent federally funded cash assistance program for non-TANF, non-SSI, eligible needy refugees during their first 8 months in the U.S.

**(12) Refugee medical assistance (RMA):** means a 100 percent federally funded medical assistance program for non-Medicaid eligible needy refugees during their first 8 months in the U.S.

**(13) Secondary migrant:** means a refugee who was initially resettled in another state but who has relocated his or her residence to New Mexico.

**(14) Spend down:** means to deduct incurred medical expenses from countable income, thereby lowering the amount of countable income to a level that may meet the financial eligibility standard.

**(15) Standard of deed:** means a maximum cash benefit amount that is based on federal regulation for TANF standard of need.

**(16) Supplemental security income (SSI):** means monthly cash payments to income eligible persons over the age of 65 or who are determined to be disabled under the authority of Title XVI of the Social Security Act.

**(17) Unearned income:** means income from one of these sources: old age, survivors and disability insurance

payments (social security); railroad retirement benefits; veteran's administration compensation or pension payments; military retirement and allotments; pensions, annuities and retirement benefits; lodge or fraternal benefits; other public or private disability or retirement benefits or pensions; shared shelter payments; individual Indian money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

**(18) Victim of human trafficking:** means an individual who has received certification from ORR as a victim of human trafficking.  
[8.119.100.7 NMAC – N, 11/01/2013]

**8.119.100.8 ABBREVIATIONS AND ACRONYMS:**

- A. AFDC:** aid to families with dependent children
- B. DHS:** (U.S) department of homeland security
- C. DOJ:** (U.S.) department of justice
- D. DOS:** (U.S.) department of state
- E. DWS:** department of workforce solutions
- F. EID:** earned income disregard
- G. HHS:** (U.S.) department of health and human services
- H. HSD:** human services department
- I. ICE:** (U.S.) immigration and customs enforcement
- J. IEP:** individual employability plan
- K. INA:** Immigration and Nationality Act
- L. IRU:** incapacity review unit
- M. ISD:** income support division
- N. MAD:** medical assistance division
- O. NMDWS:** New Mexico department of workforce solutions
- P. NMW:** New Mexico works
- Q. ORR:** office of refugee resettlement
- R. RCA:** refugee cash assistance
- S. RMA:** refugee medical assistance
- T. RRP:** refugee resettlement program
- U. RSS:** refugee social services
- V. SSI:** supplemental

- security income
- W. TANF:** temporary assistance for needy families
- X. USCIS:** (U.S.) citizenship and immigration service
- Y. VOLAG:** national voluntary agency  
[8.119.100.8 NMAC – N, 11/1/2013]

**HISTORY OF 8.119.100 NMAC: [RESERVED]**

**NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION**

**This is an amendment to 8.119.110 NMAC, Sections 3, 6, 8 and 9, effective 11-01-2013.**

**8.119.110.3 STATUTORY AUTHORITY:**

**A.** The refugee resettlement program (RRP) is authorized under Title IV of the Immigration and Nationality Act of 1980. The act designates the federal department of health and human services (DHHS) as the federal administering agency. RRP regulations are issued by DHHS in the Code of Federal Regulations, Title 45, Part 400, which is supplemented by administrative and program instructions issued by the federal department from time to time.

**B.** In accordance with authority granted to the department by NMSA 1978, section 27-1-3(J) [NMSA 1978], and pursuant to Executive Order No. 80-62, dated 10/01/81, the governor of the state of New Mexico has designated the human services department as the single state agency responsible for administering the program in New Mexico.  
[07/01/97; 8.119.110.3 NMAC - Rn, 8 NMAC 3.RRP.000.3, 03/14/2001; A, 11-01-2013]

**8.119.110.6 OBJECTIVE:** The objective of the RRP [program] is to [strengthen family life] assist refugees to become self-sufficient by providing a program of financial and medical assistance while, supportive services are provided, [to help refugees acclimate to American society and to learn English to obtain employment] to ensure the effective resettlement of refugees in the state of New Mexico through programs designed to assist with integration, promotion of economic self-sufficiency, and protecting refugees and communities from infectious diseases and other health related issues. [The department of human services] HSD has agreed to administer this program subject to the receipt of federal funds. [Under the Refugee Resettlement Program, sponsor(s) and national voluntary agencies working with the federal government closely coordinate assistance services allowed under

the program.] Under the RRP, sponsors(s) and VOLAGs work closely with the federal government to coordinate support services authorized under the program. The RRP includes the provision of refugee cash assistance (RCA), refugee medical assistance (RMA), refugee social services (RSS) and additional support services funded by the office of refugee resettlement (ORR). [07/01/97; 8.119.110.6 NMAC - Rn, 8 NMAC 3.RRP.000.6, 03/14/2001; A, 11-01-2013]

#### 8.119.110.8 APPLICATIONS:

**A. Processing applications:** Application processing requirements, timeliness and verification standards, procedures, forms, and notification requirements established for the [PROGRESS] NMW program are applicable to the [Refugee Resettlement Program (RRP)] RRP, [except as] unless otherwise noted [below].

**B.** If there are [dependent] children nineteen and under included in the household [involved], the applicant's eligibility will first be determined [for PROGRESS] in accordance with all [PROGRESS] NMW program requirements, procedures and policies. If the applicant is not found eligible for [PROGRESS] NMW, eligibility shall then be determined under the RRP.

~~C.~~ For non-medical (cash) assistance applicants, only those sections of the form dealing with the following information must be completed:

- ~~(1) identification and origin of the refugee applicants;~~
- ~~(2) income and resources of the benefit group;~~
- ~~(3) living arrangements; and~~
- ~~(4) statement of agreement and understanding of the circumstances under which financial assistance is granted, signed by the applicant.]~~

~~C.~~ Refugees are not required to apply for cash assistance in order to apply for medical assistance.

**D.** For cash assistance applicants, only those sections of the form dealing with the following information must be completed:

- ~~(1) identification and origin of the refugee applicants;~~
- ~~(2) income and resources of the benefit group;~~
- ~~(3) living arrangements; and~~
- ~~(4) statement of agreement and understanding of the circumstances under which cash assistance is granted, signed by the applicant.~~

**E.** If an otherwise eligible refugee demonstrates an urgent and immediate need for cash assistance, the application will be processed with due diligence to expedite the initial RCA

payment on an emergency basis. [07/01/97; 8.119.110.8 NMAC - Rn, 8 NMAC 3.RRP.114, 03/14/2001; A, 11-01-2013]

#### 8.119.110.9 REFERRAL TO OTHER AGENCIES:

**A. Referral to sponsoring agency:** The county office is required to notify the refugee's sponsor or local affiliate which provided for the resettlement of the refugee whenever a refugee applies for RCA. This requirement applies to new arrival refugees and to second migration refugee cases. In the event the [voluntary agency] VOLAG does not have a local affiliate for the latter cases, the [national agency] VOLAG will be notified. A response from the sponsor is not required and workers should not delay an application for this reason. A current list of VOLAGs is available on the ORR website. [Following is a list of voluntary agencies:

~~(1) U. S. Catholic Conference; Migration and Refugee Service; 1312 Massachusetts Avenue, N.W.; Washington, D.C. 20005~~

~~(2) American Fund for Czechoslovak Refugees; 1709 Broadway, Room 1316; New York, NY 10019~~

~~(3) Church World Service; Immigration and Refugee Program; 475 Riverside Drive; New York, NY 10027~~

~~(4) Lutheran Immigration and Refugee Service; 315 Park Avenue South; New York, NY 10010~~

~~(5) United HIAS Service, Inc.; 200 Park Avenue South; New York, NY 10003~~

~~(6) International Rescue Committee; 386 Park Avenue South; New York, NY 10016~~

~~(7) American Council for Nationalities Service; 20 W. 40th St.; New York, NY 10018~~

~~(8) Travelers Aid - International Social Services; 345 E. 46th St.; New York, NY 10036~~

~~(9) Tolstoy Foundation, Inc.; 250 W. 57th St.; New York, NY 10019]~~

#### **B. Referral to SSI**

(1) All refugee applicants and recipients who are 65 years of age or older, or who are blind or disabled, will immediately be referred by the county office to the social security administration to apply for SSI benefits.

(2) Such refugees will be included in the assistance grant, using the [PROGRESS] NMW standard of need until SSI benefits take effect. [The refugee] Refugees [should be] are advised to report SSI payments when received, to ISD. [Referral to SSI will be made in writing, with a request that the county office be notified of their determination. When an assistance recipient is referred to SSI, the written referral should include a statement

of the monthly amount of assistance being received:

~~C. Referral to tots to teens:~~ Recipients under age 21 receiving RRP are eligible for tots to teens. These individuals must be informed of and offered these services at the time of initial eligibility determination and when eligible for re-screening.]

[07/01/97; 8.119.110.9 NMAC - Rn, 8 NMAC 3.RRP.118, 03/14/2001; A, 11-01-2013]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.119.410 NMAC, Sections 3, 6, 8, 10 and 11, effective 11/01/2013.

#### 8.119.410.3 STATUTORY AUTHORITY:

**A.** The refugee resettlement program (RRP) is authorized under Title IV of the Immigration and Nationality Act of 1980. The act designates the federal department of health and human services (DHHS) as the federal administering agency. RRP regulations are issued by DHHS in the Code of Federal Regulations, Title 45, Part 400, which is supplemented by administrative and program instructions issued by the federal department from time to time.

**B.** In accordance with authority granted to the department by NMSA 1978, section 27-1-3(J) [NMSA 1978], and pursuant to executive order No. 80-62, dated 10/01/81, the governor of the state of New Mexico has designated the human services department as the single state agency responsible for administering the program in New Mexico.

[07/01/97; 8.119.410.3 NMAC - Rn, 8 NMAC 3.RRP.000.3, 03/14/2001; A, 11-01-2013]

**8.119.410.6 OBJECTIVE:** The objective of the RRP [program] is to [strengthen family life] assist refugees to become self-sufficient by providing a program of financial and medical assistance while, supportive services are provided, [to help refugees acclimate to American society and to learn English to obtain employment] to ensure the effective resettlement of refugees in the state of New Mexico through programs designed to assist with integration, promotion of economic self-sufficiency, and protecting refugees and communities from infectious diseases and other health related issues. [The department of human services] HSD has agreed to administer this program subject to the receipt of federal funds. [Under the Refugee Resettlement Program,



sponsor(s) and national voluntary agencies working with the federal government closely coordinate assistance services allowed under the program.] Under the RRP, sponsors(s) and VOLAGs work closely with the federal government to coordinate support services authorized under the program. The RRP includes the provision of refugee cash assistance (RCA), refugee medical assistance (RMA), refugee social services (RSS) and additional support services funded by the office of refugee resettlement (ORR). [07/01/97; 8.119.410.6 NMAC - Rn, 8 NMAC 3.RRP.000.6, 03/14/2001; A, 11-01-2013]

### 8.119.410.8 G E N E R A L RECIPIENT REQUIREMENTS:

#### A. Citizenship

(1) To be eligible for inclusion in the RCA benefit group, the [person] applicant must be classified as a ["refugee"; "refugee."]

(2) Refugees are defined by law as "Aliens who because of persecution or fear of persecution on account of race, religion or political opinion fled from their home country, and cannot return there because of fear of persecution on account of race, religion or political opinion."

(3) Refugees who apply for assistance under the Refugee Resettlement Program (RRP) must provide proof of refugee status. An "asylee", that is, a person who has been granted asylum, is also eligible under the Refugee Resettlement Program. However, in no instance is an "applicant for asylum" that is, a person who has applied for but has not been granted asylum, eligible.

(4) To be eligible for inclusion in the RRP benefit group, the individual must fall into one of the following alien statuses:

(a) paroled as a refugee or asylee under section 212(d)(5) of INA, as indicated by an INS form I-94; or

(b) refugee status under section 207 of the INA, as indicated by an INS form I-94; or

(c) asylee status under section 208 of the INA, as indicated by an INS form I-94; or

(d) conditional entry status under section 203(a)(7) of the INA as indicated by form I-94;

(5) While the exact wording on the I-94 may vary, it must clearly indicate that the person has been paroled as a refugee or asylee.

(6) In order to be eligible for assistance under this program, the person must be a refugee lawfully admitted for permanent residence or otherwise permanently residing in the U.S. under color of law and must have been in this country for less than 8 months. The limit starts with the month the individual entered the U.S., as shown on the form I-94.

(7) For refugee assistance cases involving U.S.-born children, the eligibility period for the child expires when the refugee parent who last arrived in the U.S. has been in this country for 8 months:

**B. Note:** A refugee must, as a condition of eligibility, provide the name of the resettlement agency which was responsible for his or her resettlement. This information is needed to enable the eligibility worker to clarify any assistance being provided and to determine whether the refugee has quit or refused employment.]

(2) To be eligible for inclusion in the RRP benefit group the individual must provide proof, in the form of documentation issued by USCIS, of one of the following statuses under the INA as a condition of eligibility:

(a) paroled as a refugee or asylee under section 212(d)(5) of INA; or

(b) admitted as a refugee under section 207 of the INA; or

(c) granted asylum under section 208 of the INA; or

(d) Cuban and Haitian entrants including:

(i) any individual granted parole status as a Cuban/Haitian entrant (status pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(ii) any other national of Cuba or Haiti who was paroled into the U.S. and has not acquired any other status under the INA; is the subject of exclusion or deportation proceedings under the INA; or has an application for asylum pending with the INS; and with respect to whom a final, non-appealable, and legally enforceable order of deportation or exclusion has not been entered; or

(e) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts 1989 (public Law 100-461 as amended)); or

(f) admitted for permanent residence, provided the individual previously held one of the statuses identified above.

(3) An applicant for asylum is not eligible for assistance under title IV of the INA unless otherwise provided by federal law.

#### B. Time Limits

(1) Eligibility for RCA is limited to eight (8) months from the date of entry, date of asylum, or date deportation was

withheld.

(2) For refugee assistance cases involving U.S. born children, the eligibility for RCA for the child expires when the refugee parent who last arrived in the U.S. has been in the country for eight (8) months.

#### C. General Eligibility Requirements

(1) RCA eligibility is limited to those who are ineligible for TANF. The benefit groups' eligibility for TANF must be determined before determining eligibility for RCA.

(2) An individual who is enrolled full-time in an institution of higher education will be ineligible to participate in the RCA program except where such enrollment has been approved as part of the individual's individual employability plan (IEP) and in which the enrollment will last for a period of less than one year.

(a) An individual is considered to be enrolled in an institution of higher education, if the individual is enrolled in a business, technical, trade or vocational school, that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum or if the individual is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(b) The enrollment status of a student shall begin on the first day of the school term. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and semester breaks. Enrollment status shall terminate when the student graduates, is expelled, does not re-enroll or is suspended for a period in excess of thirty (30) calendar days.

(3) A refugee must provide the name of the resettlement agency which was responsible for his or her resettlement.

(4) Possession of a social security number is not a requirement of eligibility for RCA.

[07/01/97; 8.119.410.8 NMAC - Rn, 8 NMAC 3.RRP.412, 03/14/2001; A, 11-01-2013]

### 8.119.410.10 NON-CONCURRENT RECEIPT OF ASSISTANCE:

To be eligible [of] for inclusion in the [RRP] RCA benefit group, the refugee(s) may not be receiving [financial] cash assistance under any other [departmental] HSD program of [financial] cash assistance or SSI.

[07/01/97; 8.119.410.10 NMAC - Rn, 8 NMAC 3.RRP.414, 03/14/2001; A, 11-01-2013]

### 8.119.410.11 EMPLOYMENT TRAINING AND WORK REGISTRATION:

#### A. Requirement

(1) All employable refugees who

[~~apply for or~~ receive [~~cash assistance~~] RCA, and all employable members of the assistance group of which they are part, must register for employment with an appropriate agency providing employment services or the [department of labor (DOL)] department of workforce solutions (NMDWS), and must accept an employment or training opportunity from any source which is determined appropriate for that refugee by HSD. [Refugees residing in Bernalillo county will register with the catholic social services agency of Albuquerque in lieu of DOL.]

(2) Refugees may register for employment services with the contracted provider of the RSS program. As a condition of eligibility each employable member of the benefit group must complete, and comply with, an IEP with the contracted RSS provider. Failure to comply with the IEP may result in disqualification from RCA.

(3) As a condition for receipt of RCA a refugee who is not otherwise exempt, or does not demonstrate good cause, must:

(a) go to job interviews that are arranged by HSD, the contracted RSS provider, or the resettlement agency which was responsible for the initial resettlement of the refugee;

(b) accept at any time an offer of employment, determined to be appropriate by HSD, the contracted RSS provider, or the resettlement agency which was responsible for the initial resettlement of the refugee; and

(c) participate in any employability services program which provides job or language training in the area in which the refugee resides, as deemed to be appropriate by HSD, the contracted RSS provider, or the resettlement agency which was responsible for the initial resettlement of the refugee.

(4) The ISD office shall contact the local sponsor or resettlement agency to determine if the refugee has refused, within 30 days of application, an offer of employment or has voluntarily quit a job without good cause.

(2) An employable recipient of refugee cash assistance must carry out a job search program beginning at the time the refugee is determined eligible for refugee cash assistance and no later than four months after the refugee entered the United States.

(3) Catholic social services will be responsible for implementation of the job search program applicable to persons receiving RCA which have been in this country four months or more. RCA recipients, who are otherwise not exempt, will be referred to a minimum of 2 potential employers per month for at least 8 consecutive weeks. The contractor is responsible for the designation of appropriate potential employment sites and making arrangements and facilitating the job search

~~process. Catholic social services should be aware the job search process is intended to facilitate employment for individuals as well as develop greater independence and self-reliance for persons to find employment and be upwardly mobile in the work force.~~

~~**B. Appropriateness of placement:** The catholic social services must determine if employability services and employment are appropriate in accordance with the following criteria:~~

~~(1) all assignments must be within the scope of the individual's employability plan; the plan may be modified to reflect changed services or employment conditions;~~

~~(2) the services or employment must be related to the capability of the individual to perform the task on a regular basis. any claim of adverse effect on physical or mental health must be based on adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health;~~

~~(3) the total daily commuting time to and from home to the service or employment site must not normally exceed 2 hours, not including the transporting of a child to and from a child care facility, unless a longer commuting distance or time is generally accepted in the community, in which case the round trip commuting time must not exceed the generally accepted community standards;~~

~~(4) when childcare is required, the care must meet the standards normally required by the state in its work and training programs for PROGRESS recipients;~~

~~(5) the service or work site to which the individual is assigned must not be in violation of applicable federal, state, or local health and safety standards;~~

~~(6) assignments must not be made which are discriminatory in terms of age, sex, race, creed, color, or national origin;~~

~~(7) appropriate work may be temporary, permanent, full-time, part-time, or seasonal work if such work meets the other standards of this section;~~

~~(8) the wage shall meet or exceed the federal or state minimum wage law, whichever is applicable, or if such laws are not applicable, the wage shall not be substantially less favorable than the wage normally paid for similar work in that labor market;~~

~~(9) the daily hours of work and the weekly hours of work shall not exceed those customary to the occupation; and~~

~~(10) no individual may be required to accept employment if:~~

~~(a) the position offered is vacant due to a strike, lockout, or other bona fide labor dispute; or~~

~~(b) the individual would be required to work for an employer contrary to the conditions of his existing membership~~

~~in the union governing that occupation; however, employment not governed by the rules of a union in which he or she has membership may be deemed appropriate;~~

~~(11) in addition to meeting the other criteria of this paragraph, the quality of training must meet local employers' requirements so that the individual will be in a competitive position within the labor market; the training must also be likely to lead to employment which will meet the appropriate work criteria;~~

~~(12) if an individual is a professional in need of professional refresher training and other recertification services in order to qualify to practice his or her profession in the United States, the training may consist of full-time attendance in a college or professional training program, provided that such training is approved as a part of the individual's employability plan by the state agency; does not exceed one year's duration (including any time enrolled in such program in the United States prior to the refugee's application for assistance); is specifically intended to assist the professional in becoming relicensed in his or her profession; and if completed, can realistically be expected to result in such relicensing.];~~

~~**B. Appropriateness of placement:**~~

~~(1) Employment placements must be within the scope of the individuals IEP; the plan may be modified to reflect changes in services or employment conditions.~~

~~(2) Services and employment must be related to the capability of the individual to perform the task on a regular basis. Claims, by the individual, of adverse effect on physical or mental health must be based on medical verification from a physician or licensed or certified psychologist;~~

~~(3) The total daily commuting time to and from home to the service or employment site must not normally exceed 2 hours, not including the transporting of a child to and from a child care facility, unless a longer commuting distance or time is generally accepted in the community, in which case the round trip commuting time must not exceed the generally accepted community standards.~~

~~(4) When childcare is required, the care must meet the standards normally required by the state for NMW recipients.~~

~~(5) The service or employment site to which the individual is assigned must not be in violation of applicable federal, state, or local health and safety standards.~~

~~(6) Assignments may not be made that are discriminatory in terms of age, sex, race, creed, color, or national origin.~~

~~(7) Appropriate employment placements may be temporary, permanent, full-time, part-time, or seasonal employment if such employment meets the other~~

standards of this section.

(8) The service or work site must comply with all applicable Federal, State, and local labor laws and regulations.

(9) The wage shall meet or exceed the federal or state minimum wage, whichever is applicable, or if such laws are not applicable, the wage shall not be substantially less favorable than the wage normally paid for similar work in that labor market.

(10) The daily hours of work and the weekly hours of work shall not exceed those customary to the occupation.

(11) No individual may be required to accept employment if:

(a) the position offered is vacant due to a strike, lockout, or other bona fide labor dispute; or

(b) the individual would be required to work for an employer contrary to the conditions of his existing membership in the union governing that occupation; however, employment not governed by the rules of a union in which he or she has membership may be deemed appropriate.

(12) In addition to meeting the other criteria of this paragraph, the quality of training must meet local employers' requirements so that the individual will be in a competitive position within the labor market; the training must be likely to lead to employment which will meet the appropriate work criteria.

(13) If an individual is a professional in need of professional refresher training and other recertification services in order to qualify to practice his or her profession in the U.S., the training may consist of full-time attendance in a college or professional training program, provided that such training:

(a) is approved as a part of the individual's employability plan by the state agency;

(b) does not exceed one year's duration (including any time enrolled in such program in the U.S. prior to the refugee's application for assistance);

(c) is specifically intended to assist the professional in becoming relicensed in his or her profession; and if completed,

(d) can realistically be expected to result in such relicensing; and

(e) may only be made available to individuals who are employed.

**C. Job offers:** A job offer, if determined appropriate under the requirements of this section, must be accepted by the refugee without regard to whether such job would interrupt a program of services planned or in progress, [unless:

~~(1) the refugee is currently a participant in a program in progress of on-the-job training which meets the requirements of this part and which is being carried out as part of an approved employability plan; or~~

~~(2) the refugee is enrolled full-time in a professional recertification program which meets the requirements of Subsection B of 8.119.410.11 NMAC.]~~

**D. Failure or refusal to carry out job search or to accept employability services of employment.**

**(1) Voluntary registrants:** [When a voluntary registrant—i.e., a recipient of refugee cash assistance who is exempt from registration;] Voluntary registrants are recipients of refugee cash assistance who are exempt from registration for training and employment services. When a voluntary registrant fails or refuses to participate in appropriate employability services, to carry out job search, or to accept an appropriate offer of employment, the state agency, may [de-register] remove the individual from the registry for up to 90 days from the date of determination that such failure or refusal has occurred, but the individual's cash assistance may not be affected.

**(2) Mandatory registrants:** A mandatory registrant - i.e., an employable recipient of refugee cash assistance who is not exempt from registration, who has failed or refused without good cause to meet the requirements or has voluntarily quit a job, will be [sanctioned as outlined in 8.102.620.10 NMAC] disqualified as outlined in paragraph G below.

**E. Work requirements - exemptions**

**(1) An individual is considered employable unless [one of the following exemptions applies:] he or she is a minor dependent child. A minor unmarried parent, acting as a head of household, is not considered to be a "dependent child," and is subject to participation as an adult.**

~~(a) a minor dependent child. **Note:** a teen parent acting as a head of household is not considered to be a "dependent child"; and is subject to participation as an adult;~~

~~(b) incapacitated, when determined by a physician or licensed or certified psychologist and approved by the IRU that a physical or mental impairment, by itself or in conjunction with age, prevents the individual from engaging in employment or training;~~

~~(c) 60 years of age or older;~~

~~(d) an individual who is providing care for a person who is totally disabled, as determined by HSD; it must be determined that the caretaker is providing care that prevents the institutionalization of the disabled individual;~~

~~(e) a parent or caretaker relative with a child under the age of one, provided that this exception is limited to 12 months in the individual's lifetime; in order to be eligible for this exemption, the child must be less than 12 month of age;~~

~~(f) a woman in her third trimester of pregnancy;]~~

**(2) [Note:]** Inability to communicate in English does not exempt a refugee from registration for employment services, participation in employability service programs, carrying out job search, and acceptance of appropriate offers of employment.

**F. Refusal to accept or termination of employment**

**(1) Applicants:** [To be eligible, an applicant must not during the] An applicant is not eligible if 30 consecutive calendar days immediately prior to the receipt of aid, [have] he or she has voluntarily quit a job [for the purpose of receiving assistance] without good cause, [or] refused to apply for, or accept an appropriate offer of employment, as determined by HSD. The dependent family of such an ineligible applicant may, however, [apply for and receive cash assistance] remain eligible for RCA.

**(2) Recipients:** An employable recipient must not have refused, without good cause, to go to a job interview which is arranged by [catholic social services] the RSS provider or have, without good cause, voluntarily quit a job [for the purpose of receiving assistance], or have refused to apply for or accept an appropriate offer of employment.

**(3) Job search:** [Refusal by an employable adult recipient to go for a job interview or register for employment or termination of employment without good cause, as outlined below constitutes non-compliance.] An employable recipient shall attend job interviews, register for employment and comply with the terms of his or her IEP. Termination of employment, by a recipient, shall only be with good cause. Refusal by a recipient to fulfill the job search requirement, or termination of employment without good cause is noncompliance.

**(4) Good cause:** Determination of good cause for noncompliance is made by the [ISD] HSD [eligibility] case worker and is based on the following documented circumstances:

(a) court required appearance or incarceration;

(b) an individual is already engaged in employment consistent with the work plan;

(c) a pregnant woman, starting with the 4th month of pregnancy, provided that the pregnancy and the expected date of birth have been medically verified;

(d) medically verified illness of the participant or his/her infant child. An infant child is defined as a child under 12 months of age.

**(5) The refugee must participate in the employment program once good cause for noncompliance has been remedied.**

**[G. Sanction:** If an employable refugee recipient continues to refuse an offer of employment, assistance

will be terminated 30 days after the date of his original refusal. The refugee shall be given 10 days advance written notice of the termination. The sanction is applied in the following manner:

(1) Sanctioning will follow procedures set forth in 8.102.620.10 NMAC.

(2) The refugee's sponsor or the resettlement agency will be notified of the action taken.

(3) A decision by the refugee to accept employment made at any time within the 30 day period after the date of the original refusal shall result in the continuation of assistance without interruption if the refugee continues to meet the requirements for continued assistance.

(4) An employable RRP recipient is ineligible for RRP benefits for the following periods when assistance is terminated (after opportunity for an administrative hearing if requested) because of refusal to accept an appropriate offer of employment:

(a) for three payment months for the first occurrence;

(b) for six payment months for the second and subsequent occurrences.]

**G. Disqualification:** Disqualification will follow the procedures set forth below.

(1) Cause for disqualification: A refugee recipient, who refuses an offer of employment, voluntarily quits employment without good cause, as determined by HSD, or fails to comply with his or her IEP is eligible for disqualification.

(2) The refugee shall be provided with a notice of adverse action not less than 13 days prior to the termination date. Additionally, the refugee's sponsor or resettlement agency will be notified of the action taken. The notice of adverse action will follow the policy outlined in 8.100.180.10 NMAC. The notice may include more than one instance of noncompliance or there may be separate notices for each instance of noncompliance. Each instance of noncompliance must be either resolved in a timely manner or a disqualification may occur.

(3) If the refugee regains compliance within the 30 day period after the initial date for noncompliance, assistance shall be continued without interruption so long as the refugee continues to meet the requirements of continued assistance.

(4) A disqualification consists of termination of assistance beginning 30 days after the date of the noncompliance. An employable RRP recipient is ineligible for benefits for the following periods when assistance is terminated due to noncompliance:

(a) for three payment months for the first occurrence.

(b) for six payment months for the second and subsequent occurrences.

**[H. Job or language training**

(1) As a condition of eligibility, an employable refugee must participate in any available and appropriate social services programs providing job or language training. Sanctions for refusal to participate without good cause are the same as those outlined in 08.119.410.11. Refugees in Bernalillo county will register for English as a second language training with the catholic social services agency (CSS) of Albuquerque in lieu of the New Mexico department of labor (DOL):

(2) As a condition of eligibility, an employable refugee must attend 90 per cent of the classes in any session. If the individual misses 10 per cent or more of the classes, she/he must show good cause. Good cause is defined as follows:

(a) court required appearance or incarceration;

(b) an individual is already engaged in employment consistent with the work plan;

(c) a pregnant woman, starting with the 4th month of pregnancy, provided that the pregnancy and the expected date of birth have been medically verified;

(d) medically verified illness of the participant or his/her infant child;

(e) good cause will be determined in Bernalillo county by the case managers of the catholic social services refugee resettlement program (RRP); in the rest of the state, good cause will be determined by the ISD eligibility worker.

**I. Notification:** The following procedure will be used to inform refugees of their compliance status:

(1) After the 1st and 2nd absences, a follow-up letter will be sent from the RRP office to the recipient. A copy will be placed in the case file. The letter restates the attendance policy and notes how many absences the refugee has accrued.

(2) After the 2nd absence, the same letter will include an appointment to meet with the client service manager. A letter containing an appointment will be sent by certified mail.

(3) The client service manager, will at the time the 10 per cent absenteeism is reached, contact the refugee by letter stating that he/she must contact the Refugee Resettlement Program immediately or be sanctioned. If the refugee is determined to have "good cause" for being absent, no sanction letter will be sent.

(4) If the excess absence is not excused by the client service manager, a sanction letter will be sent to the human services department detailing the refugee's non-compliance. A copy will be sent to the student.

(5) At this point, the eligibility worker will provide client with appropriate

advance notice and will initiate sanction pursuant to manual section 08.119.410.11 NMAC.].

[07/01/97; 8.119.410.11 NMAC - Rn, 8 NMAC 3.RRP.415, 03/14/2001; A, 11-01-2013]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.119.500 NMAC, Sections 3, 6 and 8, effective 11-01-2013.

### 8.119.500.3 STATUTORY AUTHORITY:

A. The Refugee Resettlement Program (RRP) is authorized under Title IV of the Immigration and Nationality Act of 1980. The act designates the federal department of health and human services (DHHS) as the federal administering agency. RRP regulations are issued by DHHS in the Code of Federal Regulations, Title 45, Part 400, which is supplemented by administrative and program instructions issued by the federal department from time to time.

B. In accordance with authority granted to the department by NMSA 1978, section 27-1-3(J) [NMSA 1978], and pursuant to executive order 80-62, dated 10/01/81, the governor of the state of New Mexico has designated the human services department as the single state agency responsible for administering the program in New Mexico.

[07/01/97; 8.119.500.3 NMAC - Rn, 8 NMAC 3.RRP.000.3, 03/14/2001; A, 11-01-2013]

**8.119.500.6 OBJECTIVE:** The objective of the RRP [program] is to [strengthen family life] assist refugees to become self-sufficient by providing a program of financial and medical assistance while, supportive services are provided, [to help refugees acclimate to American society and to learn English to obtain employment] to ensure the effective resettlement of refugees in the state of New Mexico through programs designed to assist with integration, promotion of economic self-sufficiency, and protecting refugees and communities from infectious diseases and other health related issues. [The department of human services] HSD has agreed to administer this program subject to the receipt of federal funds. [Under the Refugee Resettlement Program, sponsor(s) and national voluntary agencies working with the federal government closely coordinate assistance services allowed under the program.] Under the RRP, sponsors(s) and VOLAGs work closely with the federal government to coordinate support services

authorized under the program. The RRP includes the provision of refugee cash assistance (RCA), refugee medical assistance (RMA), refugee social services (RSS) and additional support services funded by the office of refugee resettlement (ORR).

[07/01/97; 8.119.500.6 NMAC - Rn, 8 NMAC 3.RRP.000.6, 03/14/2001; A, 11-01-2013]

### 8.119.500.8 N E E D DETERMINATION:

**A.** Income and resource eligibility, as well as amount of payment, are determined in accordance with [PROGRESS requirements as set forth in 8.102.500 NMAC except as otherwise noted below] 45 CFR Section 400.66 which requires that RCA adhere to the need determination standards and provisions of the TANF program except as otherwise noted below:

(1) Resources remaining in the refugee's country of origin may not be counted in determining income eligibility.

(2) The income of a refugee's sponsor may not be counted in determining income eligibility.

(3) Any cash grant received by the refugee applicant under the U.S. department of state or department of justice reception and placement programs may not be counted in determining income eligibility.

**B. Standard of need:** Benefit group requirements are determined in accordance with [standard of need outlined in 8.102.500.8 NMAC] 45 CFR Section 400.66 which requires that RCA adhere to the need determination standards and provisions of the TANF program.

**C. Prospective budgeting:** Need and income are determined prospectively in accordance with [PROGRESS need and income requirements set forth in 8.102.500.10 NMAC] 45 CFR Section 400.66 which requires that RCA adhere to the need determination standards and provisions of the TANF program.

[07/01/97; 8.119.500.8 NMAC - Rn, 8 NMAC 3.RRP.501, 03/14/2001; A, 11-01-2013]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.119.510 NMAC, Sections 3, 6, 8 and 9, effective 11-01-2013.

### 8.119.510.3 S T A T U T O R Y AUTHORITY:

**A.** The Refugee Resettlement Program (RRP) is authorized under Title IV of the Immigration and Nationality Act of 1980. The Act designates the federal department of health and human services (DHHS) as the federal administering

agency. RRP regulations are issued by DHHS in the code of federal regulations, Title 45, Part 400, which is supplemented by administrative and program instructions issued by the federal department from time to time.

**B.** In accordance with authority granted to the department by NMSA 1978, section 27-1-3(J) [NMSA 1978], and pursuant to Executive Order No. 80-62, dated 10/01/81, the governor of the state of New Mexico has designated the human services department as the single state agency responsible for administering the program in New Mexico.

[07/01/97; 8.119.510.3 NMAC - Rn, 8 NMAC 3.RRP.000.3, 03/14/2001; A, 11-01-2013]

**8.119.510.6 OBJECTIVE:** The objective of the RRP [program] is to [strengthen family life] assist refugees to become self-sufficient by providing a program of financial and medical assistance while, supportive services are provided, [to help refugees acclimate to American society and to learn English to obtain employment] to ensure the effective resettlement of refugees in the state of New Mexico through programs designed to assist with integration, promotion of economic self-sufficiency, and protecting refugees and communities from infectious diseases and other health related issues. [The department of human services] HSD has agreed to administer this program subject to the receipt of federal funds. [Under the Refugee Resettlement Program; sponsor(s) and national voluntary agencies working with the federal government closely coordinate assistance services allowed under the program:] Under the RRP, sponsor(s) and VOLAGs work closely with the federal government to coordinate support services authorized under the program. The RRP includes the provision of refugee cash assistance (RCA), refugee medical assistance (RMA), refugee social services (RSS) and additional support services funded by the office of refugee resettlement (ORR).

[07/01/97; 8.119.510.6 NMAC - Rn, 8 NMAC 3.RRP.000.6, 03/14/2001; A, 11-01-2013]

**8.119.510.8 GENERAL:** [In the Refugee Resettlement Program, need with respect to resources is determined in accordance with PROGRESS program standards and requirements set forth at 8.102.510 NMAC:] RCA need, with respect to resources, is determined in accordance with 45 CFR Section 400.66.

[07/01/97; 8.119.510.8 NMAC - Rn, 8 NMAC 3.RRP.510, 03/14/2001; A, 11-01-2013]

### 8.119.510.9 R E S O U R C E AVAILABILITY:

**[A.]** Resource availability is determined in accordance with [PROGRESS program requirements set forth at 8.102.510.11 NMAC] 45 CFR Section 400.66.

**[B.] Note:** Resources which may legally belong to the refugee but which were left in the country of origin are not considered available unless the refugee has ready access to them, or could obtain access to them without leaving the United States.

[07/01/97; 8.119.510.9 NMAC - Rn, 8 NMAC 3.RRP.514, 03/14/2001; A, 11-01-2013]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.119.520 NMAC, Sections 3, 6, 8 and 9, effective 11-01-2013.

### 8.119.520.3 S T A T U T O R Y AUTHORITY:

**A.** The refugee resettlement program (RRP) is authorized under Title IV of the Immigration and Nationality Act of 1980. The act designates the federal department of health and human services (DHHS) as the federal administering agency. RRP regulations are issued by DHHS in the code of federal regulations, Title 45, Part 400, which is supplemented by administrative and program instructions issued by [the federal department] DHHS from time to time.

**B.** In accordance with authority granted to the department by NMSA 1978, section 27-1-3(J) [NMSA 1978], and pursuant to Executive Order No. 80-62, dated 10/01/81, the governor of the state of New Mexico has designated the human services department as the single state agency responsible for administering the program in New Mexico.

[07/01/97; 8.119.520.3 NMAC - Rn, 8 NMAC 3.RRP.000.3, 03/14/2001; A, 11-01-2013]

**8.119.520.6 OBJECTIVE:** The objective of the RRP [program] is to [strengthen family life] assist refugees to become self-sufficient by providing a program of financial and medical assistance while, supportive services are provided, [to help refugees acclimate to American society and to learn English to obtain employment] to ensure the effective resettlement of refugees in the state of New Mexico through programs designed to assist with integration, promotion of economic self-sufficiency, and protecting refugees and communities from infectious diseases and other health related issues. [The department of human services] HSD has agreed to administer this program

subject to the receipt of federal funds. [Under the Refugee Resettlement Program; sponsor(s) and national voluntary agencies working with the federal government closely coordinate assistance services allowed under the program.] Under the RRP, sponsors(s) and VOLAGs work closely with the federal government to coordinate support services authorized under the program. The RRP includes the provision of refugee cash assistance (RCA), refugee medical assistance (RMA), refugee social services (RSS) and additional support services funded by the office of refugee resettlement (ORR). [07/01/97; 8.119.520.6 NMAC - Rn, 8 NMAC 3.RRP.000.6, 03/14/2001; A, 11-01-2013]

#### 8.119.520.8 EARNED INCOME:

**A. Standards:** [In the Refugee Resettlement Program (RRP).] For RCA earned income is determined in accordance with [the PROGRESS program requirements described in 8.102.520.8 NMAC through 8.102.520.14 NMAC except as noted below.] 45 CFR Section 400.66 which requires that RCA adhere to the need determination standards and provisions of the TANF program except as noted below.

**B. Earned Income Deductions:** The work related expenses described in 8.102.520.9 NMAC through 8.102.520.13 NMAC are applicable to [RRP] RCA eligibility and benefit calculation determinations.

[07/01/97; 8.119.520.8 NMAC - Rn, 8 NMAC 3.RRP.521, 03/14/2001; A, 11-01-2013]

**8.119.520.9 U N E A R N E D INCOME:** [Unearned income is determined according to the PROGRESS program requirements described in 8.102.520.14 NMAC except as noted below.

**A. Countable unearned income:** Countable unearned income types listed in this section are considered in RRP. In addition, special resettlement assistance payments may be available, as discussed below. If a budget group is receiving such funds, they are considered available unearned income.

**B. Refugee matching grants**

(1) The principal matching grant in effect at present is with the council of Jewish federations in association with HIAS (Hebrew immigrant aid society), covering Soviet Jewish refugees. A matching grant with RAV TOV, Inc., covers an additional small number of Soviet Jewish refugees. Matching grants covering various other relatively small groups of refugees are in effect with American fund for Czechoslovak refugees, international rescue committee, Tolstoy foundation and United States catholic conference. Refugees, except

for Cuban Indochinese refugees, may be included under a matching grant program with national voluntary resettlement agencies. Under these grants, the voluntary agency is required to provide an equal match for each federal dollar awarded.

(2) A Soviet refugee or other non-Cuban, non-Indochinese refugee may or may not be receiving cash assistance, medical assistance, and/or other services under a matching grant. Assistance, especially cash assistance, under a matching grant, is more likely if the refugee arrived in the United States less than a year before application to a state agency.

(3) Matching grants usually cover the same range of cash and medical assistance, training and services available under RRP. These grants are separate and distinct from the one-time per-capita grants made to resettlement agencies for the reception and initial placement of newly arrived refugees.

(4) If a refugee who might be covered by a matching grant applies to a county ISD office for cash or medical assistance, the county office verifies with the refugee's sponsor or resettlement agency whether the refugee is receiving such assistance and, if so, the amount.

(5) If assistance is being provided under a matching grant, the county office counts the entire amount received as income in determining the refugee's eligibility and amount of assistance under the state-administered Refugee Resettlement Program.

(6) Specific inquiry to a local sponsor or resettlement agency is made by the county office to determine:

(a) what assistance the sponsor or resettlement agency is providing to the refugee;

(b) whether the refugee has refused an offer of employment or has voluntarily quit a job without good cause; and

(c) whether the refugee has complied with job search requirements.

**C. Privately funded Soviet Jewish refugees**

(1) Certain Soviet Jewish refugees sponsored by the council of Jewish federations and the Hebrew immigrant aid society, are ineligible to receive publicly funded cash, medical, or food stamp benefits for two years after their admission to the United States, or until they attain lawful permanent resident status, whichever comes first. The sponsoring agency must reimburse the state for any assistance a refugee receives. The sponsored refugees may be identified by the following text on their departure records (I-94): "This refugee is sponsored by the Hebrew immigrant aid societies and (name of local Jewish organization). Private resources are available. If public assistance is sought, please call (name of local agency

at (phone number))".

(2) The sponsorship statement contained on a refugee's I-94 is regarded as lead information concerning income and resources that may be available to the refugee. Eligibility staff are required to follow up with the sponsoring agency to ascertain the actual availability of any income and resources and to use such verified information in the final decision on whether or not the refugee is eligible for assistance. An application may not be denied solely because of a sponsorship statement on the I-94 or knowledge of a sponsorship agreement.]

Unearned income for RCA is determined in accordance with 45 CFR Section 400.66 which requires that RCA adhere to the unearned income determination standards and provisions of the TANF program, except as noted below:

**A. Reception and placement grant:** Any cash grant received by the refugee applicant under the DOS or DOJ reception and placement programs may not be counted as unearned income in determining income eligibility.

**B. Refugee matching grants:** Refugees who have been in the U.S. fewer than 180 days may be included under the matching grant program through a local resettlement agency.

(1) Cash payments, received by refugees, as part of the matching grant program are countable as unearned income in determining RCA eligibility.

(2) If a refugee who might be covered by a matching grant program applies to an ISD office for cash assistance, the ISD county office must verify with the refugee's resettlement agency whether the refugee is receiving such assistance and, if so, the amount.

(3) If cash assistance is being provided under a matching grant, the amount must be counted as unearned income.

(4) In-kind services or shelter payments provided to a refugee as part of the matching grant program are not counted in determining eligibility.

(5) Refugees are not eligible to receive both RCA and matching grant at the same time. A refugee client applying for RCA should be advised that approval for RCA will result in ineligibility for the matching grant program. If RCA is approved, the ISD office shall notify the resettlement agency of the approval.

[07/01/97; 8.119.520.9 NMAC - Rn, 8 NMAC 3.RRP.522, 03/14/2001; A, 11-01-2013]

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
INCOME SUPPORT DIVISION**

This is an amendment to 8.139.503 NMAC, Section 10 through 13, effective Nov. 1, 2013.

**8.139.503.10 APPLICATION PROCESS**

**A. Opt in/out:** An applicant can choose to receive benefits through the regular food stamp program if:

(1) combined shelter and utility expenses, as defined at 8.139.520.11 NMAC, are greater than \$315.00; or

(2) out-of-pocket medical expenses, as defined at 8.139.520.11 NMAC, are at least \$35.00 a month.

**B. Application requirements:** The application at minimum will contain:

(1) the applicants name, and address;

(2) receipt of income and amount;

(3) amount of applicable deductions, such as shelter and medical; and

(4) must be signed by the applicant or authorized representative.

**C. Application filing:** Potential NMCAP recipients will receive applications from the department based on interface data supplied by SSA. NMCAP applicants also have the right to apply at:

(1) a social security (SSA) office; or

(2) a local ISD county office.

**D. Processing standards:** Applications are processed by the department and notice of disposition is sent to the applicant.

(1) **Standard processing:** An application shall be processed as soon as possible and the applicant afforded an opportunity to participate no later than 30 days from the date of application.

(2) **Expedited processing:** In the month of application, NMCAP applicants shall be considered as standard ~~[food-stamp]~~ supplemental nutrition assistance program (SNAP) program applicants and may qualify for expedited service.

**E. Authorized representatives:** The head of the household or the spouse or any other responsible member of the household may designate an individual who is a non-household member to act on its behalf in applying, obtaining or using ~~[food-stamp]~~ NMCAP benefits.

(1) The caseworker shall obtain a copy of the household's written authorization for the authorized representative and maintain it in the household's case record. No limit shall be placed on the number of households an authorized representative may represent.

(2) Even if the household member is able to make an application and obtain benefits, the household should be encouraged to name an authorized representative to use the ~~[food-stamp]~~ NMCAP benefits in case illness or other circumstances prevent household members from using the benefits themselves.

(3) The authorized representative's identity shall be verified and a copy of the document maintained in the household's case file.

[8.139.503.10 NMAC - N, 06/01/2009; A, 11/01/2013]

**8.139.503.11 CASE MANAGEMENT**

**A. Interviews:** NMCAP applicants are not required to see an ISD caseworker or be otherwise subjected to an interview, although additional information or verification may be requested.

**B. Certification periods:** Eligible households shall be assigned to a 36-month certification period, and with no interim contact.

**C. Reporting requirements:** All information received by the department from the SSA data interface will be deemed as true and accurate for reported changes.

**D. Actions on reported changes:** NMCAP recipients are subject only to the reporting standards of SSA and all data sent to the department monthly. Within ten days of receipt the department shall act on the following changes:

(1) death of a household member;

(2) loss of SSI eligibility;

(3) changes in state residency;

(4) a member of the household's institutional status has changed; or

(5) change in shelter cost.

**E. Recertification:** NMCAP recipients shall not be subject to an interview to review eligibility at the end of the 36-month certification period. Recipients shall receive notice of expiration and recertification prior to closure. Continued eligibility at recertification will be evaluated based on the submission of a new completed application and information received from SSA. Participants that do not reapply by the end of certification period will be subject to case closure.

[8.139.503.11 NMAC - N, 06/01/2009; A, 05/01/2012; A, 11/01/2013]

**8.139.503.12 BENEFIT DELIVERY**

**A. Effective date:** Benefits for the initial month of certification shall be prorated from the date of application according to the standard ~~[food-stamp]~~ SNAP program tables at 8.139.500 NMAC.

**B. Benefit issuance:** NMCAP are issued through a direct deposit into a household's electronic benefit transfer

(EBT) ~~[food-stamp]~~ account. EBT cards are issued and ~~[EBT-accounts]~~ maintained as defined at 8.139.610 NMAC. ~~[A]~~ An NMCAP participating household has a definite issuance date so that ~~[food-stamp]~~ benefits are received on or about the same time each month. The issuance date is based on the last two digits of the social security number of the individual to whom the ~~[food stamps]~~ benefits are issued.

**C. Benefit calculation:** Benefits are issued based on the household's total monthly shelter costs as defined at Subsection F of 8.139.520.11 NMAC. Benefit amounts shall be subject to review and adjustment in coordination with the regular food stamp program and the cost neutrality ~~[and may be adjusted each January:]~~ study. Monthly NMCAP benefit amounts are based on the following for:

(1) monthly shelter costs equal to or less than \$315.00, the maximum benefit amount is ~~[\$44.00]~~ \$33.00; and

(2) monthly shelter costs greater than \$315.00, the maximum benefit amount is ~~[\$79.00]~~ \$68.00.

[8.139.503.12 NMAC - N, 06/01/2009; A, 05/01/2012; A/E, 04/01/2013; A, 11/01/2013]

**8.139.503.13 OVERPAYMENT AND RECOUPMENT**

**A. Overpayment:** A household that has received NMCAP benefits and has been determined ineligible or does not qualify for some or all of the NMCAP benefit shall have a claim established against the household for the NMCAP benefit amount in accordance with ~~[8.139.640 NMAC]~~ 8.100.640 NMAC.

**B. Recoupment:** (1) The household shall be required to repay any amount of the NMCAP benefit due to an established claim or overpayment of the NMCAP benefit.

(2) The household shall remain subject to claim establishment and recoupment for the NMCAP benefit in accordance with ~~[8.139.640 NMAC]~~ 8.100.640 NMAC.

[8.139.503.13 NMAC - N, 05/01/2012; A, 11/01/2013]

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

**This is an amendment to 14.12.3, Section 15, effective 12-15-13**

**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-2or 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), or MHD 1, 2 or 3 for residential units only, 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, MHD, 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; A, 12-15-13]

**NEW MEXICO WATER  
QUALITY CONTROL  
COMMISSION**

**TITLE 20 ENVIRONMENTAL  
PROTECTION  
CHAPTER 6 WATER QUALITY  
PART 7 GROUND WATER  
PROTECTION - SUPPLEMENTAL  
PERMITTING REQUIREMENTS FOR  
COPPER MINE FACILITIES**

**20.6.7.1 ISSUING AGENCY:** Water Quality Control Commission.

[20.6.7.1 NMAC - N, 12/1/13]

**20.6.7.2 SCOPE:** All persons subject to the Water Quality Act, Sections 74-6-1 NMSA 1978 et seq. and specifically copper mine facilities and their operations.

[20.6.7.2 NMAC - N, 12/1/13]

**20.6.7.3 STATUTORY AUTHORITY:** Standards and regulations are adopted by the commission under the authority of the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978.

[20.6.7.3 NMAC - N, 12/1/13]

**20.6.7.4 DURATION:** Permanent.

[20.6.7.4 NMAC - N, 12/1/13]

**20.6.7.5 EFFECTIVE DATE:** 12/1/13, unless a later date is cited at the end of a section.

[20.6.7.5 NMAC - N, 12/1/13]

**20.6.7.6 OBJECTIVE:** The purpose of 20.6.7 NMAC is to supplement the general permitting requirements of 20.6.2.3000 through 20.6.2.3114 NMAC to control discharges of water contaminants specific to copper mine facilities and their operations to prevent water pollution. Compliance with these rules does not relieve an applicant or permittee of a copper mine facility from complying with the Mining Act rules in Title 19, Chapter 10 NMAC under the authority of the mining and minerals division.

[20.6.7.6 NMAC - N, 12/1/13]

**20.6.7.7 DEFINITIONS:**

**A.** Terms defined in the Water Quality Act and 20.6.2.7 NMAC shall have the meanings as given in such.

**B.** A term defined in this part shall have the following meaning.

(1) "Acid mine drainage" means water that is discharged from an area affected by mining exploration, mining, or reclamation, with a pH of less than 5.5 and in which total acidity exceeds total alkalinity as defined by the latest edition of *standard methods for the examination of water and wastewater*.

(2) "Additional conditions" means conditions and requirements included in a discharge permit pursuant to Subsection D of Section 74-6-5 NMSA 1978 that are based on site specific circumstances and that are in addition to those imposed in the rules of the commission.

(3) "Applicable standards" means the standards set forth in 20.6.2.3103 NMAC; the background concentration approved by the department; or, any alternative abatement standard approved by the commission pursuant to Subsection F of 20.6.2.4103 NMAC.

(4) "Applicant" means the person applying for a new, renewed, modified, or amended discharge permit.

(5) "Area of open pit hydrologic containment" means, for an open pit that intercepts the water table, the area where ground water drains to the open pit and is removed by evaporation or pumping, and is interior to the department approved monitoring well network installed around the perimeter of an open pit pursuant to Paragraph (4) of Subsection B of 20.6.7.28 NMAC and also limited to the area of disturbance authorized by a discharge permit.

(6) "As-built drawings" means engineering drawings which portray units as constructed.



(7) "Background" means the concentration of water contaminants naturally occurring from undisturbed geologic sources of water contaminants.

(8) "Below-grade tank" means a tank including sumps where a portion of the tank's side walls is below the surrounding ground surface elevation. A below-grade tank does not include an above ground tank that is located at or above the surrounding ground surface elevation and is surrounded by berms.

(9) "Closure" means all activities that are required pursuant to 20.6.7.33 NMAC through 20.6.7.35 NMAC and an approved discharge permit to monitor, minimize, control, mitigate, prevent or abate water pollution associated with a copper mine facility after operations at the copper mine facility, or at an individual unit within the copper mine facility, have ceased.

(10) "Construction quality assurance" or "CQA" means a planned system of activities necessary to ensure that standards and procedures are adhered to and that construction and installation meet design criteria, plans and specifications. A CQA includes inspections, verifications, audits, evaluations of material and workmanship necessary to determine and document the quality of the constructed impoundment or structure, and corrective actions when necessary.

(11) "Construction quality control" or "CQC" means a planned system of operational techniques and activities used to preserve the quality of materials and ensure construction to specifications. Elements of a CQC include inspections, testing, data collection, data analysis and appropriate corrective actions.

(12) "CQA/CQC report" means a report that summarizes all inspection, testing, data collection, data analysis and any corrective actions completed as part of CQA or CQC for a project.

(13) "Copper mine facility" means all areas within which copper mining and its related activities that may discharge water contaminants occurs and where the discharge will or does take place including, but not limited to open pits; waste rock piles; ore stockpiles; leaching operations; solution extraction and electrowinning plants; ore crushing, ore milling, ore concentrators; tailings impoundments; smelters; pipeline systems, tanks or impoundments used to convey or store process water, tailings or impacted stormwater; and truck or equipment washing units.

(14) "Copper mine rule" means 20.6.7 NMAC, as amended.

(15) "Cover system" means any engineered or constructed system designed as a source control measure to minimize to the maximum extent practicable the ingress of water or oxygen into a waste rock pile,

leach stockpile or tailing material. A cover system may be comprised of a monolithic layer of, or any combination of, earthen materials, synthetic materials, vegetation, and amendments.

(16) "Critical structure" means earthen or rock structures or embankments (such as an outslope of a rock stockpile), that are likely to cause an exceedance of applicable groundwater standards or undue risk to property in the event of a significant unexpected slope movement.

(17) "Date of postal notice" means the date when the United States postal service first makes notice to the applicant or permittee of its possession of certified mail addressed to the applicant or permittee.

(18) "Discharge" means spilling, leaking, pumping, pouring, emitting, or dumping of a water contaminant in a location and manner where there is a reasonable probability that the water contaminant may reach ground water.

(19) "Discharge permit amendment" means a minor modification of a discharge permit that does not result in a significant change in the location of a discharge, an increase in daily discharge volume of greater than 10% of the original daily discharge volume approved in an existing discharge permit for an individual discharge location, a significant increase in the concentration of water contaminants discharged, or introduction of a new water contaminant discharged.

(20) "Discharge volume" means the volume of discharged process water, impacted stormwater or tailings measured at a specific point at the copper mine facility over a specified period of time.

(21) "Existing copper mine facility" means a copper mine facility operating under an approved discharge permit as of the effective date of the copper mine rule. Existing copper mine facility includes a copper mine covered under an approved discharge permit as of the effective date of the copper mine rule that is on standby status in accordance with mining and minerals division rules.

(22) "Existing impoundment" means an impoundment that is currently receiving or has ever received process water or collected impacted stormwater and that has not been closed pursuant to a discharge permit.

(23) "Expiration" means the date upon which the term of a discharge permit ends.

(24) "Factor of safety" means, for slope stability purposes, the ratio of the resisting forces to the driving forces.

(25) "Final CQA report" means a report prepared by the CQA officer that includes as-built drawings and a detailed description of the installation methods and procedures that document that the work was

conducted as designed.

(26) "Flow meter" means a measuring device or structure used to measure the volume of water, process water, tailings or stormwater that passes a particular reference section in a unit of time.

(27) "Freeboard" means the vertical distance between the elevation at the lowest point of the top inside edge of the impoundment and the design high water elevation of the water level in the impoundment.

(28) "Highway" means any public road operated and maintained by the local, county, state or federal government.

(29) "Impacted stormwater" means direct precipitation and runoff that comes into contact with water contaminants within a copper mine facility which causes the stormwater to exceed one or more of the standards of 20.6.2.3103 NMAC and includes overflow from a primary process solution impoundment or other collection system resulting from a precipitation event.

(30) "Impoundment" means any structure designed and used for storage or containment of mine process water, or impacted stormwater, or used for solids settling, excluding a tailings impoundment. A process water or stormwater transfer sump or a tank, below-grade tank, drum or pit bottom is not an impoundment.

(31) "Interbench slope" means the outslope surface between terrace benches or between a terrace bench and any engineered conveyance system (i.e., a system to divert runoff).

(32) "Large copper mine facility" means a copper mine facility that has disturbed or is proposing to disturb an area of 1500 acres or greater.

(33) "Leach stockpile" means stockpiles of ore and all other rock piles associated with mining disturbances that have been leached, are currently being leached or have been placed in a pile for the purpose of being leached.

(34) "Liner system" means an engineered system required by the copper mine rule for the containment, management or storage of process water, leach stockpile material, waste rock, tailings or other materials that have the potential to generate water contaminants including all constructed elements of the system and may include the subgrade, liner bedding, leak detection systems, synthetic liners, earthen liners, overlayers, solution collection systems, anchor trenches, and berms, or other system elements, as applicable.

(35) "Maximum daily discharge volume" means the total daily volume of process water (expressed in gallons per day) or tailings (expressed in tons per day) authorized for discharge by a discharge permit.

(36) "Medium copper mine

facility” means a copper mine facility that has disturbed or is proposing to disturb an area of a minimum of 500 acres but less than 1500 acres.

(37) “Mining and minerals division” means the mining and minerals division of the New Mexico energy, minerals, and natural resources department.

(38) “Mining Act” means the New Mexico Mining Act, Sections 69-36-1 through 69-36-20, NMSA 1978.

(39) “New copper mine facility” means a copper mine facility that is not operating under an approved discharge permit as of the effective date of the copper mine rule.

(40) “Non-impacted stormwater” means stormwater run-off generated as a result of direct precipitation at a copper mine facility that does not exceed the standards of 20.6.2.3103 NMAC.

(41) “Open pit” means the area within which ore and waste rock are exposed and removed by surface mining.

(42) “Open pit surface drainage area” means the area in which storm water drains into an open pit and cannot feasibly be diverted by gravity outside the pit perimeter, and the underlying ground water is hydrologically contained by pumping or evaporation of water from the open pit.

(43) “Operator” means the person or persons responsible for the overall operations of a copper mine facility.

(44) “Outslope” means the sloped perimeter of waste rock piles, leach stockpiles and tailings impoundments.

(45) “Owner” means the person or persons who own all or part of a copper mine facility.

(46) “Permittee” means a person who is issued or receives by transfer a discharge permit for a copper mine facility, the holder of an expired discharge permit, or, in the absence of a discharge permit, a person who makes or controls a discharge at a copper mine facility.

(47) “Pipeline corridor” means a constructed pathway that contains concentrate, tailing or process water pipelines, associated spill containment structures, the pipeline subgrade and access roads.

(48) “Pipeline system” means one or more pipelines and associated structures used to transport process water, concentrate, slurry, tailing or impacted stormwater.

(49) “PLS” means pregnant leach solution that is generated from leaching ore or rock stockpiles.

(50) “Process water” means any water containing water contaminants in excess of the standards of 20.6.2.3103 NMAC that is generated, managed or used within a copper mine facility including raffinate; PLS; leachate collected from waste rock stockpiles, leach stockpiles,

and tailings impoundments; tailings decant water; pit dewatering water; intercepted ground water, laboratory or other waste discharges containing water contaminants; and domestic wastes mixed with process water.

(51) “Seepage” means leachate that is discharged from a waste rock stockpile or tailing impoundment and emerges above or at the ground surface or that is present in the vadose zone and may be captured prior to entering ground water.

(52) “Slag” means a partially vitreous by-product of the process of smelting ore.

(53) “Slope angle” means the horizontal run distance divided by the vertical rise, measured along the steepest gradient of the interbench slope’s physical surface (for example, a 2.5:1 slope refers to 2.5 horizontal and 1 vertical).

(54) “Small copper mine facility” means a copper mine facility that has disturbed or is proposing to disturb less than 500 acres and that does not contain tailings impoundments or leach stockpiles.

(55) “Spillway” means a structure used for controlled releases from a stormwater or process water impoundment, in a manner that protects the structural integrity of the impoundment.

(56) “Stormwater” means all direct precipitation and runoff generated within a copper mine facility from a storm event.

(57) “Surface water(s) of the state” means all surface waters as defined in 20.6.4.7 NMAC.

(58) “SX/EW” means solution extraction and electrowinning.

(59) “Tailings” means finely crushed and ground rock residue and associated fluids discharged from an ore milling, flotation beneficiation and concentrating process.

(60) “Tailings impoundment” means an impoundment that is the final repository of tailings.

(61) “Unauthorized discharge” means a release of process water, tailings, leachate or seepage from individual copper mine facility components, impacted stormwater or other substances containing water contaminants not approved by a discharge permit.

(62) “Underground mine” means the below-surface mine workings within which ore and waste rock are removed.

(63) “Unit” means a component of a mining operation including but not limited to processing, leaching, excavation, storage, stockpile or waste units.

(64) “Variance” means a commission order establishing requirements for a copper mine facility or a portion of a copper mine facility that are different than the requirements in the copper mine rule.

(65) “Waste rock” means all material excavated from a copper mine facility that is not ore or clean top soil.

[20.6.7.7 NMAC - N, 12/1/13]

#### 20.6.7.8 REQUIREMENTS FOR DISCHARGING FROM COPPER MINE FACILITIES:

**A.** No person shall discharge effluent or leachate from a copper mine facility so that it may move directly or indirectly into ground water without a discharge permit approved by the department. A person intending to discharge from a copper mine facility shall submit an application for a discharge permit pursuant to 20.6.7.10 NMAC and remit fees pursuant to 20.6.7.9 NMAC.

**B.** Permittees, owners of a copper mine facility and holders of an expired permit are responsible for complying with the copper mine rule.

**C.** Unless otherwise noted in 20.6.7 NMAC, the requirements of 20.6.2.3101 through 20.6.2.3114 NMAC apply to a copper mine facility.

**D.** Compliance with commission rules including the requirements of 20.6.7 NMAC does not relieve a copper mine facility owner, operator or permittee from complying with the requirements of other applicable local, state and federal regulations or laws.

[20.6.7.8 NMAC - N, 12/1/13]

**20.6.7.9 FEES:** An applicant or permittee shall pay fees to the department’s water quality management fund pursuant to this section in lieu of 20.6.2.3114 NMAC.

**A.** The permittee of a copper mine shall remit an annual permit fee as follows: large copper mines, one hundred and twenty-five thousand dollars (\$125,000); medium copper mines, sixty-two thousand and five hundred dollars (\$62,500); and small copper mines, twelve thousand and five hundred dollars (\$12,500). Annual permit fees shall be due each August 1 after the effective date of the discharge permit until the discharge permit is terminated.

**B.** An applicant for a discharge permit, a discharge permit renewal, discharge permit renewal and modification, or discharge permit modification for a copper mine facility shall remit an application fee of one thousand dollars (\$1,000). The application fee is not refundable and may not be applied toward future discharge permit applications.

**C.** A permittee requesting a discharge permit amendment separate from a discharge permit renewal or modification shall remit with the request a discharge permit amendment fee of five hundred dollars (\$500). The permit amendment fee is not refundable and may not be applied toward future discharge permit applications

or amendments.

**D.** A permittee requesting temporary permission to discharge pursuant to Subsection B of 20.6.2.3106 NMAC shall remit with the request a temporary permission fee of one thousand dollars (\$1,000). The temporary permission fee is not refundable and may not be applied toward future discharge permit applications or requests for temporary permission to discharge.

[20.6.7.9 NMAC - N, 12/1/13]

**20.6.7.10 GENERAL APPLICATION REQUIREMENTS FOR ALL COPPER MINE FACILITIES:** This section specifies the general requirements for discharge permit applications for all types of copper mine facilities.

**A.** Before submitting an initial application for a new copper mine facility, a prospective applicant shall schedule a pre-application meeting with the department to discuss the proposed location of the copper mine facility and individual units, the operating plans for the proposed process units, the physical characteristics of the copper mine facility's proposed site and other information that is required to be submitted in an application for a discharge permit. The pre-application meeting shall be held in Santa Fe, unless otherwise agreed to by the department. The pre-application meeting should occur no less than 60 days before the submission of the application except as approved by the department.

**B.** Instead of the information required by Subsection C of 20.6.2.3106 NMAC, an applicant shall provide information and supporting technical documentation pursuant to this section and 20.6.7.11 NMAC.

**C.** Notwithstanding Subsection F of 20.6.2.3106 NMAC, a permittee shall submit an application for renewal of a discharge permit for a copper mine facility or a unit of the copper mine facility to the department at least 270 days before the discharge permit expiration date, unless closure of the copper mine facility is approved by the department before that date.

**D.** For a copper mine facility that has been issued a discharge permit but has not been constructed or operated, a permittee shall submit to the department at least 270 days before the discharge permit expiration date an application for renewal pursuant to Subsection B of this section or a statement certifying that the copper mine facility has not been and will not be constructed and that no discharges have occurred or will occur. Upon the department's verification of the certification, the department shall terminate the discharge permit, if necessary, and retire the discharge permit number from use.

**E.** An application for a

new, renewed, or modified discharge permit for a copper mine facility shall include the information and supporting documentation required by this section except that previously submitted materials may be included by reference in discharge permit renewal or modification applications provided that the materials are current, readily available to the secretary and sufficiently identified to be retrieved. The applicant shall attest to the truth of the information and supporting documentation in the application. The applicant shall provide to the department a hard copy (paper format) of the original signed completed application and all supporting documentation. The applicant shall also provide an electronic copy of the original signed application and all supporting documentation in portable document format (PDF) on a compact disc (CD) or digital versatile disc (DVD) or other format approved by the department.

**F.** Within 90 days of the department notifying the applicant in writing that the application is deemed administratively complete pursuant to Subsection A of 20.6.2.3108 NMAC, the department shall review the application for technical completeness and shall issue a written notice by certified mail to the applicant indicating whether the application is technically complete or is deemed to be deficient. An application must include the information required by Subsection B of this section to be deemed technically complete.

**G.** If the department determines that an application is technically deficient, the applicant shall have 60 days from the date of postal notice of the technical deficiency notification to provide the information required by this section. Upon request by the applicant and for good cause shown, the department may grant one or more extensions of time for the applicant to provide the information required by the technical deficiency notification.

(1) If an applicant for a new discharge permit does not provide all information required by this section to the department within 60 days of the date of postal notice of the technical deficiency, or within any extension granted by the department, the department may deny the application. The department shall provide notice of denial to the applicant by certified mail.

(2) If an applicant for a renewed or modified discharge permit does not provide all information required by this section to the department within 60 days of the date of postal notice of the technical deficiency, or within any extension granted by the department, the department may deny the application or may propose a discharge permit for approval consistent with the requirements of the copper mine rule. If the department denies the application, the

department shall provide notice of denial to the applicant by certified mail.

(3) An applicant may supplement an application at any time during the technical review period. The department shall review the information for technical completeness within 90 days of receipt.

**H.** Within 90 days after an application is deemed technically complete or all information has been submitted to the department pursuant to a technical deficiency notification, the department shall make available a proposed approval of a discharge permit and a draft discharge permit or a notice of denial of a discharge permit application pursuant to Subsection H of 20.6.2.3108 NMAC and provide a copy to the mining and minerals division. The draft discharge permit shall contain applicable conditions specified in the copper mine rule, any conditions based on a variance issued for the copper mine facility pursuant to 20.6.2.1210 NMAC, and any additional conditions imposed under Subsection I of this section. Requests for a hearing on the proposed approval of a discharge permit or denial of a discharge permit shall be submitted to the department pursuant to Subsection K of 20.6.2.3108 NMAC.

**I.** The department may impose additional conditions on a discharge permit in accordance with Section 74-6-5 NMSA 1978. If the department proposes an additional condition in a discharge permit that is not included in the copper mine rule, the department shall include a written explanation of the reason for the additional condition with the copy of the draft permit and proposed approval sent to the applicant pursuant to Subsection H of 20.6.2.3108 NMAC. Pursuant to subsection K of 20.6.2.3108 NMAC, written comments regarding the additional condition may be submitted to the department during the comment period and a hearing may be requested regarding the additional conditions.

**J.** The secretary shall approve a discharge permit provided that it poses neither a hazard to public health nor undue risk to property, and:

(1) the requirements of the copper mine rule are met;

(2) the provisions of 20.6.2.3109 NMAC are met, with the exception of Subsection C of 20.6.2.3109 NMAC; and

(3) the denial of an application for a discharge permit is not required pursuant to Subsection E of Section 74-6-5 NMSA 1978.

[20.6.7.10 NMAC - N, 12/1/13]

**20.6.7.11 APPLICATION REQUIREMENTS FOR DISCHARGE PERMITS FOR A COPPER MINE FACILITY:**

**A.** An application for a new

discharge permit or a renewal of an existing discharge permit shall include the applicable information in this section. An application for a modification of an existing discharge permit shall include the information in this section relevant to the proposed modification but need not include information listed in this section if the information was submitted to the department in the prior discharge permit application and the information has not changed since the discharge permit was issued. The department may require separate operational and closure discharge permits, or may combine operational and closure requirements in the same permit.

**B. Contact information.**

An application shall include:

(1) applicant's name, title and affiliation with the copper mine facility, mailing address, and telephone number;

(2) the name, mailing address and telephone number of each owner and operator of the copper mine facility;

(3) if different than the applicant, the application preparer's name, title and affiliation with the copper mine facility, mailing address, telephone number and signature;

(4) the mailing address and telephone number of any independent contractor authorized to assist the copper mine facility with compliance with the Water Quality Act and 20.6.2 NMAC and 20.6.7 NMAC; and

(5) if the person submitting the application is not the owner or operator of the copper mine facility, a certification that the person is duly authorized to submit the application on behalf of the owner or operator.

**C. Ownership and real property agreements.**

(1) An application shall include the copper mine facility owner's name, title, mailing address and phone number.

(a) If more than one person has an ownership interest in the copper mine facility or a partnership exists, then the applicant shall list all persons having an ownership interest in the copper mine facility, including their names, titles, mailing addresses and telephone numbers.

(b) If any corporate entity holds an ownership interest in the copper mine facility, the applicant shall also list the name(s), as filed with the New Mexico public regulation commission, of the corporate entity, and the corporate entity's registered agent's name and address.

(2) If the applicant is not the owner of the real property upon which the copper mine facility is or will be situated, or upon which the discharge will occur, the applicant shall submit the name, address and telephone number of the owner(s), and a notarized statement from the owner which authorizes the use of the real property for the

duration of the term of the requested permit. In the event the property is under federal or state ownership the applicant shall provide other evidence of authorization to enter public lands for mining.

**D. Setbacks.**

An application for a new copper mine facility shall include a scaled map of the proposed copper mine facility layout demonstrating that the copper mine facility meets the setback requirements of 20.6.7.19 NMAC.

**E. Copper mine facility information and location.** An application shall include:

(1) the copper mine facility name, physical address and county;

(2) the township, range and section for the entire copper mine facility; and

(3) the total acreage of the copper mine facility.

**F. Public notice preparation.**

(1) An application for a new, modified or renewed and modified discharge permit shall include the name of a newspaper of general circulation in the location of the copper mine facility for the display advertisement publication, the proposed public location(s) for posting of the 2-foot by 3-foot sign, and the proposed off-site public location for posting of the additional notice, as required by Subsection B of 20.6.2.3108 NMAC.

(2) An application for a renewed discharge permit that does not seek a discharge permit modification shall include the name of a newspaper of general circulation in the location of the copper mine facility for the future display advertisement publication as required by Subsection C of 20.6.2.3108 NMAC.

**G. Pre-discharge total dissolved solids concentration in ground water.**

An application shall include the pre-discharge total dissolved solids concentration, or range of concentration, from analytical results of ground water obtained from on-site test data from the aquifer(s) that may be affected by discharges from the copper mine facility. A copy of the laboratory analysis stating the pre-discharge total dissolved solids concentration shall be submitted with the application.

**H. Determination of maximum daily discharge volume.**

An application shall include the following information.

(1) The proposed maximum daily discharge volume of process water and tailings for each discharge location and a description of the discharge locations and the methods and calculations used to determine that volume.

(2) The identification of all sources of process water and tailings.

(3) The estimated daily volume of process water and tailings generated.

(4) Information regarding other waste discharges (i.e., domestic or industrial) at the copper mine facility. Permit identification numbers shall be submitted for those discharges that are already permitted.

**I. Process water and tailings quality.** An application shall include estimated concentrations of process water and tailings slurry quality for the constituents identified in 20.6.2.3103 NMAC including the basis for these estimations.

**J. Identification and physical description of the copper mine facility.** An application shall include the following information;

(1) a scaled map of the entire existing or proposed copper mine facility showing the location of all features identified in Paragraphs (2) through (11) of this subsection; the map shall be clear and legible, and drawn to a scale such that all necessary information is plainly shown and identified; the map shall show the scale in feet or metric measure, a graphical scale, a north arrow, and the effective date of the map; multiple maps showing different portions of the copper mine facility may be provided using different scales as appropriate; documentation identifying the means used to locate the mapped objects (i.e., global positioning system (GPS), land survey, digital map interpolation, etc.) and the relative accuracy of the data (i.e., within a specified distance expressed in feet or meters) shall be included with the map; any object that cannot be directly shown due to its location inside of existing structures, or because it is buried without surface identification, shall be identified on the map in a schematic format and identified as such;

(2) a description of each existing or proposed tailing impoundment, leach stockpile, process water and impacted stormwater impoundment, waste rock stockpile, and slag including information about its location, purpose, liner material, storage or disposal capacity, and the methods proposed or used to prevent pollution of ground water;

(3) a description of each existing or proposed open pit and underground mine within the proposed copper mine facility and information about its location, depth, size, and acreage;

(4) a description of each existing or proposed material handling and processing unit including crushing, milling, concentrating, smelting and SX/EW units within the copper mine facility, and information about its location and proposed methods of process water handling and disposal;

(5) a description of existing or proposed sumps, tanks, pipelines and truck and equipment wash units, including information for each unit regarding its location, purpose, construction material,

dimensions and capacity; for portable tanks or pipelines or those subject to periodic relocation, identify the areas within which they may be used;

(6) a description of the proposed method(s) to manage stormwater runoff and run-on to minimize leachate that may be discharged;

(7) a description of water wells and monitoring wells, including information for each well regarding its location, construction material, dimensions and capacity;

(8) a description of flow meters required pursuant to the copper mine rule or a discharge permit and fixed pumps for discharge of process water, tailings and impacted stormwater;

(9) a description of any surface water(s) of the state and any other springs, seeps, ditch irrigation systems, acequias, and irrigation canals and drains located within the boundary of the copper mine facility;

(10) a description of proposed sampling locations; and

(11) a description of all septic tanks and leachfields used for the disposal of domestic wastes.

**K. Surface soil survey, geology and hydrology.** An application shall include:

(1) the most recent regional soil survey map and associated descriptions identifying surface soil type(s);

(2) a geologic map covering the area within a one-mile radius of the copper mine facility and geologic and lithological information which provides a geologic profile of the subsurface conditions beneath the copper mine site, including the thickness of each geologic unit, identification of which geologic units are water bearing, cross sectional diagrams and sources of all such information; and

(3) hydrologic information on any surface waters of the state within one-half mile of the boundary of the copper mine facility, and of subsurface conditions for all water bearing zones beneath the copper mine facility including maximum and minimum depths to ground water, direction of ground water flow, hydrologic gradients shown by potentiometric maps, transmissivity and storativity, and ground water quality; the sources of all such information shall be provided with the application.

**L. Location map.** An application shall include a location map with topographic surface contours identifying all of the following features located within a one-mile radius of the copper mine facility:

(1) watercourses, lakebeds, sinkholes, playa lakes, seeps and springs (springs used to provide water for human consumption shall be so denoted);

(2) wells supplying water for a public water system and private domestic water wells;

(3) irrigation and other water supply wells; and

(4) ditch irrigations systems, acequias, irrigation canals and drains.

**M. Flood zone map.** An application shall include, if available, the most recent 100-year flood zone map developed by the federal emergency management administration (FEMA), flood insurance rate map or other flood boundary and floodway map with the copper mine clearly identified along with all 100-year frequency flood zones for the copper mine facility, and a description of any engineered measures used for flood protection.

**N. Engineering design, construction and surveying.** Pursuant to 20.6.7.17, 20.6.7.18, 20.6.7.20, 20.6.7.21, 20.6.7.22, 20.6.7.23 and 20.6.7.26 NMAC an application shall include:

(1) plans and specifications for proposed new or modified tailings impoundments, leach stockpiles, waste rock stockpiles, and process water and impacted stormwater impoundments and associated liners;

(2) plans and specifications for proposed new or modified tanks, pipelines, truck and equipment wash units and other containment systems; and

(3) a stormwater management plan.

**O. Material characterization plan and material handling plan.** An application shall include a material characterization plan and, if applicable, a material handling plan for all waste rock excavated at the copper mine facility pursuant to Subsection A of 20.6.7.21 NMAC.

**P. Hydrologic conceptual model.** An application for a discharge permit for a new copper mine facility shall include a site hydrologic conceptual model providing:

(1) a description of the hydrogeologic setting at the copper mine facility including ground water potentiometric maps, surface water drainages and flows, types of ground water and surface water recharge and its distribution, and hydrologic boundary conditions and divides;

(2) the site hydrogeologic setting relative to both local and regional hydrology and geology including appropriate cross-sectional diagrams depicting major geologic formations and structures, aquifers, and ground water depths;

(3) potential sources of water contaminants including discharge types and their locations;

(4) potential pathways for migration of water contaminants to ground water and surface water; and

(5) any surface waters of the state that are gaining because of inflow of ground water that may be affected by water

contaminants discharged from the copper mine facility.

**Q. Waste minimization plan.** An application shall include a waste minimization plan to implement, as practicable, best management practices for minimization and recycling of process water and wastes generated at the copper mine facility to reduce the potential for impacts to ground water.

**R. Monitoring wells.** An application shall include the location of all existing and proposed ground water monitoring wells pursuant to 20.6.7.28 NMAC.

**S. Flow metering.** An application shall describe a copper mine facility's flow metering system pursuant to Paragraph (5) of Subsection C of 20.6.7.17 NMAC, Subsection E of 20.6.7.18 NMAC, and Subsections C and E of 20.6.7.29 NMAC, including:

(1) the method(s) (i.e., pumped versus gravity flow) of process water discharge and stormwater transfer and handling;

(2) the proposed flow measurement devices for each flow method and information about its type and capacity; and

(3) the location of all existing and proposed flow meters required pursuant to the copper mine rule or a discharge permit.

**T. Closure plan.** An application shall include a closure plan for all portions of a copper mine facility pursuant to Subsection A of 20.6.7.18 NMAC, 20.6.7.33 NMAC, 20.6.7.34 NMAC and 20.6.7.35 NMAC unless closure of the copper mine facility is covered, or will be covered, by a separate closure discharge permit.

**U. Financial assurance.** An application shall include a proposal for financial assurance for those portions of a copper mine facility to be reclaimed in accordance with a closure plan submitted pursuant to Subsection A of 20.6.7.18 NMAC, 20.6.7.33 NMAC, 20.6.7.34 NMAC and 20.6.7.35 NMAC.

**V. Variances.** An application shall identify any issued or proposed variances for the copper mine facility pursuant to 20.6.2.1210 NMAC and the sections of the copper mine rule affected by the variance(s).

**W. Meteorological data.** An application shall include a plan to measure meteorological data at sites throughout the copper mine facility including precipitation, temperature, relative humidity, solar radiation, wind speed and wind direction.

[20.6.7.11 NMAC - N, 12/1/13]

**20.6.7.12** [RESERVED]

**20.6.7.13** [RESERVED]

**20.6.7.14 REQUIREMENTS FOR A DISCHARGE PERMIT AMENDMENT:**

**A.** A permittee may submit a request for a discharge permit amendment to the department at any time during the term of an approved discharge permit.

**B.** A permittee shall remit a fee pursuant to Subsection C of 20.6.7.9 NMAC with the request for a discharge permit amendment.

**C.** A discharge permit amendment shall be administratively reviewed and evaluated by the department and is not subject to public notice or a public hearing.

**D.** The department shall approve, disapprove or request additional information necessary for a determination regarding a discharge permit amendment within 30 days of receipt of a request.

**E.** The department shall provide notice of all discharge permit amendment approvals or denials to those persons on the copper mine facility-specific list maintained by the department who have requested notice of discharge permit applications.

[20.6.7.14 NMAC - N, 12/1/13]

**20.6.7.15 [RESERVED]**

**20.6.7.16 [RESERVED]**

**20.6.7.17 GENERAL ENGINEERING AND SURVEYING REQUIREMENTS:**

**A. Practice of engineering.** All plans, designs, drawings, reports and specifications required by the copper mine rule that require the practice of engineering shall bear the seal and signature of a licensed New Mexico professional engineer pursuant to the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 61-23-33, NMSA 1978, and the rules promulgated under that authority.

**B. Practice of surveying.** All plans, drawings and reports required by the copper mine rule that require the practice of surveying shall bear the seal and signature of a licensed New Mexico professional surveyor pursuant to the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 61-23-33, NMSA 1978, and the rules promulgated under that authority.

**C. Engineering plans and specifications requirements.** The following engineering plans and specifications and associated requirements shall be submitted to the department for approval with an application for a new, renewed or modified discharge permit, as applicable.

(1) **Liner system plans and**

**specifications.** An applicant or permittee proposing or required to construct a new or improve an existing liner system required by the copper mine rule or an existing discharge permit, including the repair, modification or replacement of a liner system, shall include the following elements in all liner system plans and specifications submitted to the department.

(a) **Construction plans and specifications.** Detailed and complete construction plans and specifications and supporting design calculations developed pursuant to this section and 20.6.7.18 and 20.6.7.20 through 20.6.7.26 NMAC shall be submitted to the department.

(b) **Liner system CQA/CQC.** The construction and installation of all liner systems and the repair, modification or replacement of a liner system shall be conducted in accordance with a construction quality assurance/construction quality control (CQA/CQC) plan. A CQA/CQC plan shall be included as part of the design plans and specifications. The CQA/CQC plan shall specify the observations and tests to be used to ensure that construction of the liner system meets all design criteria, plans and specifications. All liner system testing and evaluation reports for liner construction and installation, including modifications and replacements shall be signed and sealed by a licensed New Mexico professional engineer with experience in liner system construction and installation. The CQA/CQC plan shall include the following elements.

(i) the identity of persons responsible for overseeing the CQA/CQC program. The person responsible for overseeing the CQA/CQC plan shall be a licensed New Mexico professional engineer with experience in liner system construction and installation;

(ii) an inspection protocol;

(iii) identification of field and laboratory testing equipment and facilities proposed to be used, and calibration methods;

(iv) the procedures for observing and testing the liner, subgrade, liner bedding, and other liner system construction material;

(v) a protocol for verification of any manufacturers' quality control testing and procedures;

(vi) the procedures for reviewing inspection test results and laboratory and field sampling test results;

(vii) the actions to be taken to replace or repair liner material, subgrade, liner bedding, or other liner system construction materials should deficiencies be identified;

(viii) the procedures for seaming synthetic liners;

(ix) the reporting

procedures for all inspections and test data; and

(x) the submission of a CQA/CQC report.

(c) **Management of process water, solids and sludge or impacted stormwater during liner system improvement.** An applicant or permittee proposing or required to improve copper mine facility operational units that requires the use of a liner system, including re-lining or replacement of an existing liner system, shall submit a plan for managing process water, solids and sludges, or impacted stormwater during preparation and construction of the improvement. The plan shall be submitted as part of the design plans and specifications. The plan shall include the following minimum elements.

(i) a plan for handling and disposal of process water, solids and sludges and impacted stormwater discharges during improvement to the impoundment;

(ii) a plan for removal and disposal of process water, solids and sludges or impacted stormwater within the liner system prior to beginning improvement to the liner system;

(iii) a plan and schedule for implementation of the project; and

(iv) if the plan proposes a temporary location for the discharge of process water, solids and sludge, or impacted stormwater not authorized by the effective discharge permit, the applicant or permittee shall request temporary permission to discharge from the department pursuant to Subsection B of Section 20.6.2.3106 NMAC.

(d) **Dam safety.** An applicant or permittee proposing or required to construct a tailings impoundment shall submit documentation of compliance with the requirements of the dam safety bureau of the state engineer pursuant to Section 72-5-32 NMSA 1978, and rules promulgated under that authority, unless exempt by law from such requirements.

(2) **Tank, pipeline, sump or other containment system plans and specifications.** An applicant or permittee proposing or required to construct a new tank, pipeline, sump or other containment system for the management of tailings, process water or other water contaminants shall submit detailed and complete construction plans and specifications and supporting design calculations developed pursuant to this section and 20.6.7.23 NMAC. The construction plans and specifications for an improvement(s) or replacement of an existing tank, pipeline, sump or other containment systems shall address the management of solids, waste, process water or other water contaminants generated during preparation and construction of the improvements or replacement. This requirement does not apply to portable or temporary tanks,

pipelines, sumps, or other containment systems that are subject to periodic relocation during mining operations.

(3) **Process water or impacted stormwater treatment system plans and specifications.** An applicant or permittee proposing or required to construct a treatment system during mine operations for process water or impacted stormwater to be treated prior to discharge shall submit detailed and complete construction plans and specifications and supporting design calculations developed pursuant to this section and 20.6.7.18 NMAC.

(4) **Impacted stormwater management plans and specifications.** An applicant shall submit stormwater management plans and specifications to limit run-on of stormwater and manage impacted stormwater in a manner which prevents water pollution that may cause an exceedance of the applicable standards. The plans and specifications shall be submitted with an application for a new or renewed discharge permit, or as applicable with an application for a modified discharge permit, and shall include the following information.

(a) A scaled map of the copper mine facility showing:

(i) the property boundaries of the copper mine facility and the mining areas;

(ii) all existing and proposed structures;

(iii) existing and proposed final ground surface contours outside of the open pit surface drainage area at appropriate vertical intervals; and

(iv) existing and proposed stormwater containment and conveyance structures, including construction materials, size, type, slope, capacity and inlet and invert elevation (or minimum and maximum slopes) of the structures, as applicable.

(b) A description of existing surface water drainage conditions.

(c) A description of the proposed post-development surface water drainage conditions.

(d) Supplemental information supporting the stormwater management plan including the following information:

(i) hydrologic and hydraulic calculations for design storm events;

(ii) hydraulic calculations demonstrating the capacity of existing and proposed stormwater impoundments;

(iii) hydraulic calculations demonstrating the capacity of existing and proposed conveyance channels to divert stormwater or contain and transport runoff to stormwater impoundment(s); and

(iv) a list of tools and references used to develop the hydrologic

and hydraulic calculations such as computer software, documents, circulars, and manuals.

(e) A plan to manage impacted stormwater, and to divert run-on of non-impacted stormwater where practicable. The plan shall include, as necessary, design, construction, and installation of stormwater run-on and run-off diversion structures, collection of impacted stormwater, and a description of existing surface water drainage conditions. The plan shall consider:

(i) the amount, intensity, duration and frequency of precipitation;

(ii) watershed characteristics including the size, topography, soils and vegetation of the watershed; and

(iii) runoff characteristics including the peak rate, volumes and time distribution of runoff events.

(5) **Flow metering plans.** An applicant or permittee proposing or required to install a flow meter(s) pursuant to the copper mine rule shall submit a flow metering plan to support the selection of the proposed device along with information or construction plans and specifications, as appropriate, detailing the installation or construction of each device. This information or construction plans and specifications proposed by the applicant or permittee shall be submitted to the department with the application for a new discharge permit or a renewed or modified discharge permit if a new flow meter is proposed.

#### **D. New impoundment engineering design requirements.**

At a minimum, construction of a new impoundment or replacement of an existing impoundment shall be in accordance with the applicable liner, design, and construction requirements of this subsection. These requirements do not apply to tailing impoundments that are subject to the specific engineering design requirements of Paragraph (4) of Subsection A of 20.6.7.22 NMAC.

##### **(1) General design and construction requirements.**

(a) The outside slopes of an impoundment shall be a maximum of two (horizontal) to one (vertical) and shall meet a minimum static factor of safety of 1.3 with water impounded to the maximum capacity design level, except where an impoundment is bounded by rock walls or is below the surrounding surface grade.

(b) The dikes of an impoundment shall be designed to allow for access for maintenance unless otherwise approved by the department.

(c) Liners shall be installed with sufficient slack in the liner material to accommodate expansion and contraction due to temperature changes. Folds in the liner material shall not be present in the completed liner except to the extent

necessary to provide slack.

(d) Liners shall be anchored in an anchor trench. The trench shall be of a size and setback distance sufficient for the size of the impoundment.

(e) Liner panels shall be oriented such that all sidewall seams are vertical.

(f) Any opening in the liner through which a pipe or other fixture protrudes shall be sealed in accordance with the liner manufacturer's requirements. Liner penetrations shall be detailed in the construction plans and as-built drawings.

(g) All liners shall be installed by an individual that has the necessary training and experience as required by the liner manufacturer.

(h) Liner manufacturer's installation and field seaming guidelines shall be followed.

(i) All liner seams shall be field tested by the installer and verification of the adequacy of the seams shall be submitted to the department along with the as-built drawings.

(j) Concrete slabs installed on top of a liner for operational purposes shall be completed in accordance with manufacturer and installer recommendations to ensure liner integrity.

(2) **Impoundment capacity.** Impoundments shall meet the following design capacities. Capacity requirements may be satisfied by a single impoundment or by the collective capacity of multiple interconnected impoundments and any interconnected tanks.

##### **(a) Capacity requirements for impoundments that contain leach solutions.**

Process water systems that impound leach solutions shall be designed for adequate overflow capacity for upset conditions such as power outages, pump or conveyance disruptions and significant precipitation events. Any impoundment that collects leach solutions and is routinely at capacity shall be designed to maintain a minimum of two feet of freeboard during normal operating conditions while conveying the maximum design process flows. The appropriate overflow capacity design shall consider system redundancies such as backup power systems and pumps. The overflow capacity shall be designed to contain the maximum design flows for the collection system for the maximum period of time that is required for maintenance activities or restoration to normal operating conditions while maintaining two feet of freeboard. If the collection system receives direct precipitation run-off with little or no flow attenuation in the upgradient leach stockpile collection system, the overflow capacity shall be sized to contain the runoff from a 100 year, 24 hour storm event in addition to the upset condition capacity. For process water impoundments located

within the open pit surface drainage area, the open pit bottom may be utilized for a portion of the permitted impoundment capacity. Impoundments constructed on a leach stockpile such that any overflow would discharge to and be contained by the approved leach stockpile system are not subject to this capacity requirement.

(b) **Other process water impoundment capacity requirements.** Process water impoundments intended to manage or dispose of process water, other than leach solutions, shall be designed for adequate overflow capacity for upset conditions such as power outages, pump or conveyance disruptions and significant precipitation events. Any impoundment that collects such process water and is routinely at capacity shall be designed to maintain a minimum of two feet of freeboard during normal operating conditions while conveying the maximum design process flows. The appropriate overflow capacity design shall consider system redundancies such as backup power systems and pumps. The overflow capacity shall be designed to contain the maximum design flows for the collection system for the maximum period of time that is required for maintenance activities or restoration to normal operating conditions while maintaining two feet of freeboard. For process water impoundments located within the open pit surface drainage area, the open pit bottom may be utilized for a portion of the permitted impoundment capacity. Impoundments constructed on a leach stockpile such that any overflow would discharge to and be contained by the approved leach stockpile system are not subject to this capacity requirement.

(c) **Combination process water/ impacted stormwater impoundment capacity requirements.** Impoundments, other than impoundments for the containment of leach solutions, intended to dispose of a combination of process water and impacted stormwater shall be designed to contain, at a minimum, the volume described in Subparagraph (b) of Paragraph 2 of this subsection and the volume of stormwater runoff and direct precipitation generated from the receiving surface area resulting from a 100 year return interval storm event while preserving two feet of freeboard. For combination process water/ impacted stormwater impoundments located within the open pit surface drainage area, the open pit bottom may be utilized for a portion of the impoundment capacity.

(d) **Evaporative impacted stormwater impoundment design requirements.** Impoundments intended to manage or dispose of impacted stormwater by evaporation shall be designed to contain, at a minimum, the volume of stormwater runoff and direct precipitation generated from the receiving surface area resulting

from a 100 year return interval storm event while preserving two feet of freeboard. For impoundments located within the open pit surface drainage area, the open pit bottom may be utilized for a portion of the impoundment capacity.

(e) **Other impacted stormwater impoundment design requirements.** Other impacted stormwater impoundment systems shall be designed to prevent overflow resulting from a 100 year return interval storm event while maintaining two feet of freeboard and may use interconnected impoundments, gravity flow conveyances and pumping systems designed to remove water from individual impoundments at rates to prevent overflow during the design storm event. The appropriate overflow capacity design shall consider system redundancies such as backup power systems and pumps. For impacted stormwater impoundments located within the open pit surface drainage area, the open pit bottom may be utilized for a portion of the permitted impoundment capacity.

(f) **Conveyance design requirement.** Open channel conveyance structures intended to transport stormwater to an impoundment shall be designed to convey, at a minimum, the peak flow from a 100 year return interval storm event while preserving adequate freeboard, but not less than six inches of freeboard. Conveyances shall be designed to minimize ponding and infiltration of stormwater.

(g) **Solids settling.** An impoundment designed and used for solids settling shall not be used to satisfy the impoundment capacity requirements of this paragraph.

(3) **Process water and impacted stormwater long-term storage impoundments.** Process water, and impacted stormwater impoundments that store impacted stormwater for longer than thirty days shall meet the following design and construction requirements, except that process water and impacted stormwater long-term impoundments located within an open pit surface drainage area of an existing copper mine facility may be designed and constructed in accordance with the requirements of Paragraph (4) of this subsection.

(a) **Liner system.** At a minimum, impoundments subject to this paragraph shall be designed and constructed as an engineered liner system consisting of a suitable subgrade and liner bedding overlain by a secondary synthetic liner which is overlain by a leak collection system overlain by a primary synthetic liner, unless an alternate design is approved by the department pursuant to Subparagraph (e) of this paragraph. The liner system shall be installed in accordance with a department approved CQA/CQC plan pursuant to Paragraph (2) of Subsection C of

20.6.7.17 NMAC.

(b) **Liner system sub-grade and bedding.** The liner system shall be placed upon a stable sub-grade. The sub-grade shall be free of sharp rocks, vegetation and stubble to a depth of at least six inches below the liner. Liners shall be placed on a liner bedding of sand or fine soil. The surface in contact with the liner shall be smooth to allow for good contact between liner bedding. The liner bedding surface shall be sufficiently dry during liner installation such that free or excess water will not hinder the welding of seams. The liner installer shall provide the owner or permittee with a sub-grade and liner bedding acceptance certificate prior to installing the liner indicating acceptance of the earthwork.

(c) **Liner type.** The primary and secondary synthetic liners for the impoundment shall provide the same or greater level of containment, including permeability, as a 60 mil HDPE geomembrane liner system. The liner system's tensile strength, tear and puncture resistance and resistance to degradation by ultraviolet light shall be compatible with design loads, exposure and conditions.

(d) **Leak collection system.** A leak collection system shall be constructed between the primary and secondary synthetic liners for the purpose of collecting and rapidly removing fluids from leaks that may occur in the primary liner so that minimal hydraulic head is maintained on the secondary liner. The leak collection system shall consist of a drainage layer, fluid collection pipes and a fluid removal system to prevent hydraulic head transference from the primary liner to the secondary liner and shall meet the following requirements.

(i) The drainage layer shall be constructed of granular soil materials or geosynthetic drainage net (geonet) with a design slope of at least two percent. Drainage material shall have a coefficient of permeability of  $1 \times 10^{-2}$  centimeters/second or greater.

(ii) Perforated fluid collection pipes shall be installed to transmit fluid from the drainage layer to a fluid collection sump(s). Collection pipe material, diameter, wall thickness, and slot size and distribution shall be sufficient to prevent deflection, buckling, collapse or other failure. Collection pipes shall be installed with slopes equivalent to the slope of the drainage layer. Collection pipe systems shall be designed to allow for cleaning of all collection pipes with standard pipe cleaning equipment.

(iii) A fluid removal system shall be installed to remove fluid from the leak collection system. The fluid removal system shall consist of a sump(s), a dedicated pump(s), an automated pump activation system that activates the pump(s)



when a specific fluid level is reached in a sump(s), a totalizing flow meter to measure to measure the volume of leachate pumped from the system, and an automated alarm system that provides warning of pump failure. Alternately a gravity drain system may be utilized where practicable and approved by the department.

(e) An applicant or permittee may propose for department approval an alternative design for process water and impacted stormwater long-term storage impoundments that provides the same or greater level of containment as a double synthetically lined system with leak collection.

(4) **Impacted stormwater impoundments.** Impacted stormwater impoundments that store impacted stormwater for less than 30 days shall meet the following design and construction requirements; except that any such impoundments located within an open pit surface drainage area may not require a liner.

(a) **Liner system.** At a minimum, an impacted stormwater impoundment subject to this paragraph shall be constructed as an engineered liner system consisting of a compacted subbase overlain by a synthetic liner. The liner system shall be installed in accordance with a department approved CQA/CQC plan pursuant to Paragraph (2) of Subsection C of 20.6.7.17 NMAC.

(b) **Liner system subgrade and liner bedding.** The liner system shall be prepared and placed upon a stable subgrade. The top surface of the subgrade shall be smooth and free of sharp rocks or any other material that could penetrate the overlying liner bedding or synthetic liner. Liner bedding shall be placed atop the subgrade and shall consist of a minimum of six inches of sand or fine soil to allow for good contact between liner and liner bedding. The liner bedding surface shall be sufficiently dry during liner installation such that free or excess water will not hinder the welding of seams. The liner installer shall provide the owner or permittee with a sub-grade and liner bedding acceptance certificate prior to installing the liner indicating acceptance of the earthwork.

(c) **Liner type.** Synthetic liners for an impacted stormwater impoundment shall provide the same or greater level of containment, including permeability, as a 60 mil HDPE geomembrane liner system. The liner system's tensile strength, tear and puncture resistance and resistance to degradation by ultraviolet light shall be compatible with design loads, exposure and conditions.

(d) **Wind protection.** Liner systems for impacted stormwater impoundments shall be designed and constructed with a weighting system to secure the liner and limit liner damage

during periods of extreme wind events when the impoundment is empty.

(e) **Alternate design.** An applicant or permittee may propose for department approval an alternative design for an impacted stormwater impoundment that provides the same or greater level of containment as the liner system described in Subparagraphs (a) through (d) of this paragraph.

(5) **Non-impacted stormwater impoundments.** Non-impacted stormwater impoundments located outside the open pit surface drainage area over contaminated areas where the water has the potential to infiltrate and produce a leachate that may cause an exceedance of the applicable standards require a liner system designed and installed in accordance with Paragraph (4) this subsection.

(6) **Separation between impoundments and ground water.** Impoundments that require a liner pursuant to this subsection shall not be constructed in a location where the vertical distance between the seasonal high ground water level and the finished grade of the floor of the impoundment is less than or equal to four feet unless the applicant or permittee submits an engineering evaluation from a licensed New Mexico professional engineer that demonstrates that the impoundment design will not be affected by shallow ground water conditions.

(7) **Spillways.** Impacted stormwater impoundments shall have spillways to safely discharge the peak runoff of a 25-year, 24-hour precipitation event, or an event with a 90-percent chance of not being exceeded for the design life of the impoundment. Impoundments intended as primary containment for process water shall not be designed with a spillway that empties onto the ground surface.

[20.6.7.17 NMAC - N, 12/1/13]

## 20.6.7.18 GENERAL OPERATIONAL REQUIREMENTS:

### A. Planning for closure.

To the extent practicable, copper mine facility units shall be designed and operated in a manner that considers implementation of the copper mine facility closure plan submitted pursuant to 20.6.7.33 NMAC including:

(1) identifying material that is suitable for use to construct covers and, when feasible, segregating that material from other mined materials to preserve it for use to construct covers; and

(2) consideration of closure grading and drainage plans in the design and construction of leach stockpiles, tailings impoundments, waste rock stockpiles, and other copper mine facilities.

**B. Construction requirements.** A permittee shall meet the

following requirements for construction of a liner system for the containment of water contaminants, including repair or relining of a liner system.

(1) A permittee shall notify the department at least five working days before starting construction or repair or relining to allow for an inspection by the department, except in the case of an emergency repair. If an emergency repair is necessary, the permittee shall notify the department within 24 hours of starting the repair.

(2) A permittee shall submit to the department a construction certification report bearing the seal and signature of a licensed New Mexico professional engineer, when required by the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 61-23-33 NMSA 1978, and the rules promulgated under that authority, verifying that installation and construction was completed pursuant to Subsections C and D of 20.6.7.17 NMAC. The construction certification report shall include as-built drawings, final specifications, final capacity calculations and the CQA/CQC report.

(3) The construction certification report shall be submitted to the department before discharging or placing ore or wastes in a liner system.

**C. Notice of mining operations and discharge.** A permittee shall provide written notice to the department of the commencement, or recommencement of operations as follows.

(1) **For new copper mine facilities.**

(a) **Commencement of construction.** A permittee shall provide written notice to the department a minimum of 30 days before commencing construction of units covered by a permit issued pursuant to the copper mine rule.

(b) **Commencement of discharge.** A minimum of 30 days prior to discharging or emplacement of ore or waste rock in a constructed impoundment, stockpile, or tailings impoundment a permittee shall provide written notice to the department of the anticipated date that discharge or emplacement of ore or waste rock will commence. A permittee shall provide written verification to the department of the actual date of commencement within 30 days of commencement.

(2) **For existing copper mine facilities.**

(a) **Commencement of a new discharge.** A minimum of 30 days prior to discharging or emplacement of ore or waste in a newly constructed impoundment, stockpile, or tailings impoundment the permittee shall provide written notice to the department of the anticipated date that discharge or emplacement of ore or waste will commence. A permittee shall provide written verification to the department of the

actual date of commencement within 30 days of commencement.

**(b) Recommencement of mining.**

If a permittee is on standby pursuant to the Mining Act, a permittee shall provide written notice to the department indicating the planned date of recommencement of operations at a copper mine facility that include operation of units covered by a permit issued pursuant to the copper mine rule. Written notification shall be submitted to the department a minimum of 30 days prior to the date mining is to recommence.

**D. Stormwater management.** A permittee shall divert and manage stormwater from the open pit, leach stockpiles, waste rock and tailings impoundments and other copper mine facility areas containing material that could generate or release water contaminants in accordance with a stormwater management plan as required by Paragraph (4) of Subsection C of 20.6.7.17 NMAC.

**E. Flow meters.** A permittee shall employ a flow metering system that uses flow measurement devices (flow meters, weirs or other department approved method) to measure the volume of process water and tailings discharged at a copper mine facility as follows.

**(1) Flow meter installation.**

Flow meters shall be installed in accordance with the flow meter plans submitted with the application for a new, renewed or modified discharge permit pursuant to Paragraph (5) of Subsection C of 20.6.7.17 NMAC, and this section. Flow meters shall be permanently labeled with meter identification nomenclature, and the month and year of meter installation.

**(2) Flow meter inspection and maintenance.** A permittee shall visually inspect flow meters on a monthly basis for evidence of malfunction. If a visual inspection indicates a flow meter is not functioning to measure flow, the permittee shall repair or replace the meter within 30 days of or as soon as practicable following discovery. The repaired or replaced flow meter shall be installed and calibrated pursuant to this subsection. The permittee shall submit a report of repaired or replaced meters to the department in the subsequent monitoring report which shall include:

(a) information on repairs including a description of the malfunction; a statement verifying the repair, and a description of calibration of the flow meter pursuant to Paragraph (3) of this subsection.

(b) for replacement meters, information demonstrating that the device is in accordance with the plan for flow metering devices submitted pursuant to Paragraph (5) of Subsection C of 20.6.7.17 NMAC, and that the device has been calibrated pursuant to Paragraph (3) of this subsection.

**(3) Flow meter calibration.** All

flow meters required under the copper mine rule shall be calibrated to have their accuracy ascertained according to the flow metering plan submitted pursuant to Paragraph (5) of Subsection C of 20.6.7.17 NMAC and the approved discharge permit. Flow meters shall be calibrated to within plus or minus ten percent of actual flow.

**(4) Excluded flow meters.** A permittee may utilize additional flow meters not required by the copper mine rule and those flow meters are not subject to the copper mine rule requirements.

**F. Impoundments.**

**(1) New impoundments.**

Construction of an impoundment pursuant to a discharge permit issued after the effective date of the copper mine rule shall be performed in accordance with the liner, design, and construction requirements of Subsection D of 20.6.7.17 NMAC.

**(2) Existing impoundments.** An impoundment authorized by a discharge permit issued prior to the effective date of the copper mine rule and in existence on the effective date of the copper mine rule that does not meet the requirements of Paragraph (3) of Subsection D of 20.6.7.17 NMAC may continue to receive process water or impacted stormwater provided the requirements of Subparagraphs (a) and (b) or (c) of this paragraph are met or the impoundment is located within the open pit surface drainage area. If the requirements of Subparagraphs (a) and (b) or (c) of this paragraph are not met, the impoundment shall be replaced or improved in accordance with the liner, design, and construction requirements of Subsection D of 20.6.7.17 NMAC.

(a) Ground water monitoring data from monitoring wells downgradient of the impoundment indicates that the impoundment is functioning as designed.

(b) The impoundment has integrity and is capable of maintaining integrity for its operational life.

(c) The impoundment is covered by a variance granted pursuant to 20.6.2.1210 NMAC.

**(3) Impoundment inspection and maintenance.** A permittee shall maintain impoundments to prevent conditions which could affect the structural integrity of the impoundments and associated liners during active operations. Such conditions include, but are not limited to, erosion damage; animal burrows or other animal damage; the presence of vegetation including aquatic plants, weeds, woody shrubs or trees growing within five feet of the top inside edge of a sub-grade impoundment, within five feet of the toe of the outside berm of an above-grade impoundment, or within the impoundment itself; evidence of seepage; evidence of berm subsidence; and the presence of large debris or large quantities

of debris in the impoundments. A permittee shall inspect impoundments and surrounding berms on a quarterly basis to ensure proper condition and control vegetation growing in and around the impoundments in a manner that is protective of the liners. Within 24 hours of discovery, a permittee shall report to the department any evidence of damage that threatens the structural integrity of a berm or liner of an impoundment or that may result in an unauthorized discharge. A permittee is not required to report routine berm maintenance to the department.

**(4) Freeboard.** The fluid level elevation in an impoundment shall be maintained such that a minimum of two feet of freeboard is preserved within the impoundment at all times.

**(5) Leak collection system inspection and maintenance:** A permittee shall inspect and maintain impoundments utilizing primary and secondary liners and equipped with leak collection systems as follows:

(a) liquid accumulation within the sump of the leak collection system shall be returned to the respective impoundment or the process water system utilizing an automatically activated pump or other engineered design approved by the department to minimize hydraulic head on the secondary liner by insuring the interstitial space between the liners does not become saturated; and

(b) the permittee shall inspect the sump(s), dedicated pump(s), any automated pump activation system, any automated alarm system and totalizing flow meter associated with the leak detection and collection system on a monthly basis for evidence of malfunction; if an inspection indicates malfunction of any of these components, the permittee shall repair the component(s) within 30 days of discovery or shall retain a record of why the repair took longer; the permittee shall notify the department of component malfunctions and repairs made in the subsequent quarterly report.

[20.6.7.18 NMAC - N, 12/1/13]

**20.6.7.19 SETBACK REQUIREMENTS FOR A COPPER MINE FACILITY APPLYING FOR A DISCHARGE PERMIT:**

**A.** The setback requirements of this section apply to a new copper mine facility for which an application for a discharge permit is received by the department after the effective date of the copper mine rule.

**B.** The setback requirements shall be measured as horizontal map distances.

**C.** The required setback distances shall be met as certified by the applicant as of the receipt date of the

application.

**D.** If the setback requirements apply to a copper mine facility, an applicant or permittee shall not propose or construct a leach stockpile, waste rock stockpile, tailing impoundment, or process water and impacted stormwater impoundment that does not meet the setback as determined as of the receipt date of the application for a new discharge permit by the department.

**E. Leach stockpile, waste rock stockpile, tailing impoundment, process water impoundment or impacted stormwater impoundment setback requirements.**

(1) Leach stockpiles, waste rock stockpiles, tailing impoundments, process water impoundments or impacted stormwater impoundments shall be located:

(a) greater than 500 feet from a private domestic water well or spring that supplies water for human consumption; and

(b) greater than 1000 feet from any water well or spring that supplies water for a public water system as defined by 20.7.10 NMAC, unless a wellhead protection program established by the public water system requires a greater distance.

(2) The requirements of Subparagraph (a) of Paragraph (1) of this subsection shall not apply to wells or springs that supply water to the copper mine facility for human consumption and are located within the property boundary of the copper mine facility.

(3) The requirements of Paragraph (1) of this subsection shall not apply to wells that are constructed after a copper mine facility received a discharge permit for a leach stockpile, waste rock stockpile, tailing impoundment, process water impoundment or impacted stormwater impoundment.

(4) Setback distances shall be measured from the toe of the outer edge of a leach stockpile, waste rock stockpile, tailing impoundment, process water impoundment or impacted stormwater impoundment at its final design build out.

[20.6.7.19 NMAC - N, 12/1/13]

#### **20.6.7.20 REQUIREMENTS FOR LEACH STOCKPILES AND SX/EW PLANTS:**

**A. Engineering design requirements.** At a minimum, the following requirements shall be met in designing leach stockpiles at copper mine facilities unless the applicant or permittee can demonstrate that an alternate design will provide an equal or greater level of containment.

(1) **New leach stockpiles.** New leach stockpiles shall meet the following requirements.

(a) **Liner system.** A new leach stockpile shall be placed on an engineered liner system consisting of a subgrade and

compacted earthen liner overlain by a synthetic liner which is overlain by a solution collection system designed to transmit process fluids out of the leach stockpile. The liner system shall be approved by the department prior to installation and shall be installed in accordance with a department approved CQA/CQC plan pursuant to Paragraph (1) of Subsection C of 20.6.7.17 NMAC.

(b) **Liner system subgrade and earthen liner.** A liner system earthen liner shall be prepared and placed upon a stable subgrade. The prepared earthen liner shall consist of a minimum of 12 inches of soil that has a minimum re-compacted in-place coefficient of permeability of  $1 \times 10^{-6}$  cm/sec. The top surface of the earthen liner shall be smooth and free of sharp rocks or any other material that could penetrate the overlying synthetic liner.

(c) **Liner type.** A synthetic liner for a leach stockpile shall provide the same or greater level of containment, including permeability, as a 60 mil HDPE geomembrane liner system. The liner system's tensile strength, tear and puncture resistance and resistance to degradation by ultraviolet light shall be compatible with design loads, exposures and conditions. A licensed New Mexico professional engineer with experience in liner system construction and installation shall identify the basis for the geomembrane composition and specific liner based upon:

(i) the type, slope and stability of the subgrade;

(ii) the overliner protection and provisions for hydraulic relief within the liner system;

(iii) the load and the means of applying the load on the liner system;

(iv) the compatibility of the liner material with process solutions applied to the leach stockpile and temperature extremes of the location at which it will be installed; and

(v) the liner's ability to remain functional for five years after the implementation of closure of the leach stockpile.

(d) **Solution collection system.** A solution collection system shall be constructed in an overliner protection and drainage system. The solution collection system shall be designed to remain functional for five years after the operational life of the leach stockpile. The overliner protection shall be designed and constructed to protect the synthetic liner from damage during loading and minimize the potential for penetration of the synthetic liner. A sloped collection system shall be designed that will transmit fluids out of the drainage layer of the leach stockpile. The collection system shall be designed to maintain a

hydraulic head of less than the thickness of the drainage layer but the drainage layer shall not exceed five feet in thickness. Any penetration of the liner by the collection system through which a pipe or other fixture protrudes shall be constructed in accordance with the liner manufacturer's requirements. Liner penetrations shall be detailed in the construction plans and as-built drawings.

(e) **Solution containment systems.** PLS flows exiting the leach stockpile shall be collected, contained and conveyed to a process water impoundment(s) or tank(s) using pipelines or lined conveyance systems.

(f) **Alternate design.** An applicant may propose and the department may approve an alternative design for a leach stockpile located within an open pit surface drainage area provided that the stockpile and solution capture systems are designed to maximize leach solution capture considering the site-specific conditions of the open pit, underlying geology and hydrology, and leach solutions will not migrate outside of the open pit surface drainage area.

(2) **Solution extraction/electrowinning (SX/EW) plants.** All SX/EW plants shall be designed to contain all associated process fluids within impermeable vessels with secondary containment or process water impoundments meeting the requirements of Subsection D of 20.6.7.17 NMAC. All pipeline and tank systems associated with SX/EW plants shall be designed and operated pursuant to 20.6.7.23 NMAC.

#### **B. Construction.**

(1) **New leach stockpile and SX/EW plants.** Construction of a new leach stockpile or SX/EW plant, including expansion of an existing leach stockpile beyond its ground surface footprint on the effective date of the copper mine rule, shall be performed in accordance with the applicable engineering requirements of Subsection A of 20.6.7.20 and 20.6.7.17 NMAC.

(2) **Existing leach stockpiles.** A leach stockpile system, including its associated solution collection or containment system, at a copper mine facility in existence on the effective date of the copper mine rule is not required to meet the design and construction requirements of Subsection A of 20.6.7.20 NMAC and may continue to operate as previously permitted under a discharge permit subject to compliance with the contingency requirements of 20.6.30 NMAC. A permit issued for such an existing leach stockpile system after the effective date of the copper mine rule may include the conditions of the existing discharge permit, which shall not be considered to be "additional conditions" under Subsection I of 20.6.7 NMAC.

#### **C. Operational**

**requirements.**

(1) **Leach stockpile operating requirements.** A permittee operating a leach stockpile shall operate the stockpile pursuant to the following requirements.

(a) The stockpile shall remain within the area identified in the discharge permit.

(b) The perimeter of the stockpile and the solution collection system shall be inspected monthly.

(c) Any evidence of instability in the stockpile that could potentially result in a slope failure or an unauthorized discharge shall be reported to the department as soon as possible, but not later than 24 hours after discovery and corrected pursuant to Subsection H of Section 20.6.7.30 NMAC.

(d) Any leaks or spills of PLS or leach solutions outside the leach stockpile or containment system shall be recorded and reported pursuant to 20.6.2.1203 NMAC.

(e) If seeps occur they shall be monitored on a monthly basis and an estimate of the seep flow rate shall be made. Monthly records of the seep inspections and flow rates shall be maintained and included in the site monitoring reports.

(f) Leach solution application rates shall not exceed the maximum rates approved in the discharge permit.

(g) The daily leach solution application and PLS collection rate shall be determined using flow meters installed in accordance with this section and Paragraph (5) of Subsection C of 20.6.7.17 NMAC.

(h) The daily rate and monthly volume of leach solution applied and PLS collected shall be recorded, maintained, and included in the site monitoring reports.

(2) **Solution extraction/electrowinning (SX/EW) plants.** A permittee operating a SX/EW plant shall operate the SX/EW plant pursuant to the following requirements.

(a) All solution management and extraction operations shall be contained within pipeline and tank systems designed and operated pursuant to 20.6.7.23 NMAC or process water impoundments meeting the requirements of Subsection D of 20.6.7.17 NMAC.

(b) Sludge and spent electrolyte from the SX/EW plant shall be either placed upon the leach stockpile for leaching or disposed of at an approved location. [20.6.7.20 NMAC - N, 12/1/13]

### 20.6.7.21 REQUIREMENTS FOR COPPER MINE WASTE ROCK STOCKPILES:

#### A. Material characterization requirements.

(1) **Material characterization and acid mine drainage prediction.** All waste rock stored, deposited or disposed of at a copper mine facility shall be evaluated for

its potential to generate acid and to release water contaminants at levels in excess of the standards of 20.6.2.3103 NMAC. A plan for determining the potential of the material to release water contaminants, and the method for such evaluations shall be submitted to the department for approval in a material characterization plan that includes the following.

(a) The geologic, mineralogical, physical, and geochemical characteristics of the material stored, deposited or disposed of at the copper mine facility.

(b) A sampling and analysis plan to provide representative samples of the entire range of material stored, deposited or disposed of at the copper mine facility. The plan shall include quality assurance/quality control procedures to be implemented to ensure the validity of the sample results. The plan shall consider the following factors in collecting and establishing representative samples.

(i) lithological variations;

(ii) particle size distribution of each lithology;

(iii) hydraulic conductivity, water content and matric suction relationship for each lithology;

(iv) mineralogical and textural variations;

(v) the nature and extent of sulfide mineralization;

(vi) color variation;

(vii) degree and nature

of fracturing;

(viii) variations in

oxidation and reducing conditions; and

(ix) the nature and

extent of secondary mineralization.

(c) A static testing program using, at a minimum, acid/base accounting, or a department approved equivalent testing method, to evaluate the acid generation and neutralization potential of the material; and meteoric water mobility procedure or other department approved method for whole rock testing to determine water contaminant leaching potential.

(d) If the results of static testing indicate that a material may be acid generating or may generate a leachate containing water contaminants, a kinetic testing program shall be proposed to evaluate reaction rates, provide data to estimate drainage quality, the lag time to acidification of the material, and primary weathering and secondary mineral precipitation/dissolution as it may affect acidification, neutralization and drainage quality. The length of and means of determining when kinetic tests will be discontinued shall be approved by the department prior to implementation of the kinetic testing program.

(e) If the results of the static testing or kinetic testing indicate that the

material will be acid generating or generate water contaminants, and the materials will be placed outside of an open pit surface drainage area, a plan shall be submitted to the department to evaluate whether discharges of leachate from the stockpile may cause an exceedance of applicable standards, including an evaluation of the geology and hydrology of the area where the material is to be placed. The plan may include either a department approved model or other department approved demonstration.

(f) If an interceptor system pursuant to Subparagraph (d) of Paragraph (1) of Subsection B of this section or a liner system is proposed for storage or disposal of waste rock, the kinetic testing program is not required.

(2) **Material handling plan.** A permittee shall manage waste rock that may generate or release water contaminants according to a material handling plan approved by the department. The material handling plan shall address:

(a) segregation of acid generating materials and materials that may generate or release water contaminants and the method for handling, storage or disposal of the materials in a manner designed to prevent an exceedance of applicable standards;

(b) stockpiling of non-acid generating materials for potential use in neutralizing acid generating materials or in reclamation;

(c) blending or layering of material types to maximize the benefit of acid neutralizing material;

(d) any chemical amendments of the waste rock;

(e) a description of any proposed containment system(s) proposed in accordance with Subsection B of 20.6.7.21 NMAC.

#### B. Engineering design requirements for new waste rock stockpiles.

At a minimum, the following requirements shall be met in designing engineered structures for waste rock stockpiles at copper mine facilities unless the applicant or permittee can demonstrate that an alternate design will provide an equal or greater level of containment.

(1) **New waste rock stockpiles located outside an open pit surface drainage area.** New waste rock stockpiles located outside an open pit surface drainage area shall meet the following requirements unless the applicant or permittee demonstrates through material characterization or implementation of a material handling plan pursuant to Subsection A of this section that the waste rock pile will not cause an exceedance of applicable standards.

(a) Stormwater run-on shall be diverted or contained to minimize contact between stormwater run-on and the stockpiled material.

(b) Seepage from the sides of a waste rock stockpile shall be captured and contained through the construction of headwalls, impoundments and diversion structures as applicable.

(c) Ground water impacted by waste rock stockpiles in excess of applicable standards shall be captured and contained through the construction of interceptor systems as applicable.

(d) The applicant shall submit design plans signed and sealed by a qualified licensed New Mexico professional engineer along with a design report that includes the following.

(i) The proposed areal extent and configuration of the waste rock stockpile.

(ii) The topography of the site where the waste rock stockpile will be located.

(iii) The geology of the site.

(iv) The design of waste rock stockpile seepage collection systems, to be proposed based on consideration of site-specific conditions.

(v) The design of stormwater diversion structures to minimize contact between stormwater run-on and the waste rock material. The design shall consider the amount, intensity, duration and frequency of precipitation; watershed characteristics including the area, topography, geomorphology, soils and vegetation of the watershed; and run-off characteristics of the watershed including the peak rate, volumes and time distribution of run-off events.

(vi) An aquifer evaluation to determine the potential nature and extent of impacts to ground water from the waste rock stockpile based on the proposed waste rock stockpile design and geochemical characteristics. The aquifer evaluation shall include a complete description of aquifer characteristics and hydrogeologic controls on the movement of leachate from the waste rock stockpile and ground water impacted by the waste rock stockpile based on actual field data.

(vii) A design report for a proposed interceptor system for containment and capture of ground water impacted by the waste rock stockpile based on the aquifer evaluation required in Subparagraph (d) of Paragraph (1) of Subsection B of this section. The design report shall include, at a minimum construction drawings and interceptor system performance information, recommended equipment including pumps and meters, recommended pump settings and pumping rates, methods for data collection, and a demonstration that the permittee has adequate water rights to operate the system as designed. The design report shall include a demonstration that the interceptor system

design will capture ground water impacted by the waste rock stockpile such that applicable standards will not be exceeded at monitor well locations specified by 20.6.7.28 NMAC. The interceptor system shall be designed to maximize capture of impacted ground water and minimize the extent of ground water impacted by the waste rock stockpile.

(viii) within 120 days of completion of seepage collection and interceptor system construction, or liner system installation a final report shall be submitted to the department that includes complete as-built drawings and a summary of how the items in Subparagraph (a) of Paragraph (1) of Subsection B of 20.6.7.21 thru Subparagraph (d) of Paragraph (1) of Subsection B of 20.6.7.21 NMAC were incorporated into the design.

(e) If the department determines that the proposed waste rock stockpile, seepage collection and interceptor systems when operated in accordance with the design plan specified in this paragraph would cause ground water to exceed applicable standards at monitoring well locations specified by 20.6.7.28 NMAC, the department shall require additional controls which may include but are not limited to a liner system as additional conditions in accordance with Subsection H of 20.6.7.10 NMAC.

**(2) New waste rock stockpiles located inside an open pit surface drainage area.** Stormwater run-on shall be diverted or contained to minimize contact between stormwater run-on and the stockpiled material.

#### C. Construction.

**(1) New waste rock stockpiles.** Construction of a new waste rock stockpile shall be performed in accordance with the applicable engineering requirements of Subsection B of 20.6.7.21 NMAC and 20.6.7.17 NMAC.

**(2) Existing waste rock stockpiles.** A waste rock stockpile in existence on the effective date of the copper mine rule is not required to meet the design and construction requirements of Subsection B of 20.6.7.21 NMAC and may continue to operate as previously authorized under a discharge permit unless ground water monitoring of the stockpile pursuant to 20.6.7.28 NMAC requires implementation of corrective action under Subsection A of 20.6.7.30 NMAC. A permit issued for such an existing waste rock stockpile after the effective date of the copper mine rule may include the conditions of the existing discharge permit, which shall not be considered to be "additional conditions" under Subsection I of 20.6.7 NMAC.

**D. Operational requirements.** A permittee operating a waste rock stockpile shall operate the stockpile pursuant to the following requirements.

(1) The stockpile shall remain within the area identified in the approved design plan required in Paragraph (1) of Subsection B of 20.6.7.21 NMAC.

(2) The perimeter of the stockpile and the solution collection systems shall be inspected monthly.

(3) Any evidence of mass instability in the stockpile that could potentially result in a slope failure that may result in an unauthorized discharge shall be reported to the department as soon as possible, but not later than 24 hours after discovery and corrected pursuant to Subsection H of Section 20.6.7.30 NMAC.

(4) Any leaks or spills of leachate outside the waste rock stockpile and any associated containment system shall be recorded and reported pursuant to 20.6.2.1203 NMAC.

(5) If seeps occur, they shall be monitored on a monthly basis and an estimate of the seep flow rate shall be made. Monthly records of the seep inspections and flow rates shall be maintained and included in the site monitoring reports.

(6) Interceptor system collection rates shall be determined using flow meters installed in accordance with Paragraph (5) of Subsection C of 20.6.7.17 NMAC.

(7) The placement of waste rock shall be in accordance with an operating plan that describes the sequencing of waste rock deposition on an annual basis, operation of seepage collection systems, operation of interceptor systems, operation of systems to return water to the concentrator or other locations as appropriate, and any other water management features.

(8) If an interceptor system to maintain capture of ground water impacted by a waste rock stockpile exists, the permittee shall submit an interceptor system monitoring and evaluation report pursuant to 20.6.7.29 NMAC.

[20.6.7.21 NMAC - N, 12/1/13]

#### **20.6.7.22 REQUIREMENTS FOR COPPER CRUSHING, MILLING, CONCENTRATOR, SMELTING AND TAILINGS IMPOUNDMENT UNITS:**

**A. Engineering design requirements.** At a minimum, the following requirements shall be met in designing crushing, milling, concentrating, smelting and tailings impoundment units at copper mine facilities unless the applicant or permittee can demonstrate that an alternate design will provide an equal or greater level of containment.

**(1) New crushing and milling units.** New crushing and milling units, including associated ore storage, except when located within the open pit surface drainage area, shall be designed to contain and manage all materials containing water contaminants that have the potential to migrate to ground

water and cause an exceedance of applicable standards on concrete or low permeability surfaces approved by the department.

**(2) New concentrator units.**

New concentrator units shall be designed to contain and manage in tank and pipeline systems designed and operated pursuant to 20.6.7.23 NMAC all materials containing water contaminants that have the potential to migrate to ground water and cause an exceedance of applicable standards. Tailing and concentrate thickener tanks may be constructed with concrete or low permeability bottoms consisting of a minimum of 12 inches of soil that has a minimum re-compacted in-place coefficient of permeability of  $1 \times 10^{-6}$  cm/sec. The tank designs shall be based on plans and specifications signed and sealed by a licensed New Mexico professional engineer. For low permeability bottoms, such plans and specifications shall describe how process rates, material density and settling rates were considered in the design to minimize infiltration such that water contaminants in the tank will not migrate to ground water and cause an exceedance of applicable standards.

**(3) New smelting units.**

New smelting units shall be designed to contain and manage on impermeable surfaces all materials, including associated slag and flue dust, containing water contaminants that have the potential to migrate to ground water and cause an exceedance of applicable standards.

**(4) New tailings impoundments.**

Tailings impoundments shall be designed according to the following requirements.

(a) Stormwater run-on shall be diverted and/or contained to minimize contact between stormwater run-on and the tailing material.

(b) Seepage from the sides of a tailing impoundment shall be captured and contained through the construction of headwalls, impoundments and diversion structures as applicable.

(c) Ground water impacted by the tailing impoundment in excess of applicable standards shall be captured and contained through the construction of interceptor systems designed in accordance with Subparagraph (d) of Paragraph (4) of Subsection A of 20.6.7.22 NMAC.

(d) The applicant shall submit design plans signed and sealed by a licensed New Mexico professional engineer along with a design report that includes the following.

(i) The annual volumes and daily maximum design rates of tailings or other discharge approved by the department to be deposited in the impoundment.

(ii) The topography of the site where the impoundment will be located.

(iii) The geology of the

site.

(iv) The design footprint of the tailing impoundment.

(v) The design of tailing seepage collection systems, to be proposed based on consideration of site-specific conditions.

(vi) The design of stormwater diversion structures to minimize contact between stormwater run-on and the tailing material. The design shall consider the amount, intensity, duration and frequency of precipitation; watershed characteristics including the area, topography, geomorphology, soils and vegetation of the watershed; and run-off characteristics of the watershed including the peak rate, volumes and time distribution of run-off events.

(vii) An aquifer evaluation to determine the potential nature and extent of impacts on ground water from the tailings impoundment based on the proposed tailings impoundment design. The aquifer evaluation shall include a complete description of aquifer characteristics and hydrogeologic controls on movement of tailing drainage and ground water impacted by the tailings impoundment.

(viii) A design report for a proposed interceptor system for containment and capture of ground water impacted by the tailings impoundment based on the aquifer evaluation required in Subparagraph (d) of Paragraph (4) of Subsection A of this section. The design report shall include, at a minimum construction drawings and interceptor system performance information, recommended equipment including pumps and meters, recommended pump settings and pumping rates, methods for data collection, and a demonstration that the permittee has adequate water rights to operate the system as designed. The design report shall include a demonstration that interceptor system design will capture ground water impacted by the tailings impoundment such that applicable standards will not be exceeded at monitoring well locations specified by 20.6.7.28 NMAC. The interceptor system shall be designed to maximize capture of impacted ground water and minimize the extent of ground water impacted by the tailings impoundment.

(ix) Within 120 days of seepage collection and interceptor well system construction, or liner system installation a final report shall be submitted to the department that includes complete as-built drawings and a summary of how the items in Subparagraph (a) thru Subparagraph (d) of Paragraph (4) of Subsection A of 20.6.7.22 NMAC were incorporated into the design.

(e) If the department determines that the proposed tailings impoundment, seepage collection and interceptor systems when constructed and operated in

accordance with the design plan specified in this paragraph would cause ground water to exceed applicable standards at monitoring well locations specified by 20.6.7.28 NMAC, the department shall require additional controls, which may include but are not limited to, a liner system as additional conditions in accordance with Subsection I of 20.6.7.10 NMAC.

**(5) New dry stack tailing piles.** New dry stack tailings piles shall comply with the material characterization, engineering design, construction, and operational requirements of 20.6.7.21 NMAC, as applicable.

**B. Construction.**

**(1) New crushing, milling, concentrating, smelting, or tailings impoundment.** Construction of a new crushing, milling, concentrating, smelting, or tailings impoundment shall be performed in accordance with the applicable engineering requirements of Subsection A of 20.6.7.22 and 20.6.7.17 NMAC.

**(2) Existing crushing, milling, concentrating, smelting or tailings impoundments.** Crushing, milling, concentrating, smelting and tailings impoundments at an existing copper mine facility in existence on the effective date of the copper mine rule are not required to meet the liner, design, and construction requirements of Subsection A of 20.6.7.22 NMAC and may continue to operate as previously authorized under a discharge permit subject to compliance with the contingency requirements of 20.6.7.30 NMAC so long as they are maintained within the existing footprint. A permit issued for such an existing crushing, milling, concentrating, smelting or tailings impoundment after the effective date of the copper mine rule may include the conditions of the existing discharge permit, which shall not be considered to be "additional conditions" under Subsection I of 20.6.7 NMAC.

**C. Operational Requirements.**

**(1) Tailings impoundment operating requirements.** A permittee operating a tailings impoundment shall operate the impoundment pursuant to the following requirements.

(a) The tailings impoundment shall remain within the area identified in the approved design.

(b) The perimeter of the tailings impoundment and any associated solution collection systems shall be inspected monthly.

(c) Any evidence of instability in the tailings impoundment that could potentially result in a dam failure and an unauthorized discharge shall be reported to the department as soon as possible, but not later than 24 hours after discovery.

(d) Any leaks or spills outside the tailings impoundment and any associated containment system shall be recorded and reported pursuant to 20.6.2.1203 NMAC.

(e) If seeps occur, they shall be monitored on a monthly basis and an estimate of the seep flow rate shall be made. Monthly records of the seep inspections and flow rates shall be maintained and included in the site monitoring reports.

(f) The monthly volume of tailings placed in the impoundment shall be recorded, maintained, and included in the site monitoring reports.

(g) Tailings deposition rates shall not exceed the maximum rates approved in the discharge permit.

(h) The daily tailings deposition and associated solution system collection rate shall be determined using flow meters installed in accordance with Paragraph (5) of Subsection C of 20.6.7.17 NMAC.

(i) The average daily rate and monthly volume of tailings deposited and solution collected shall be recorded, maintained, and included in the site monitoring reports.

(j) The placement of tailings and effluent shall be in accordance with an operating plan that describes the following:

(i) the sequencing of tailings deposition on an annual basis;

(ii) measures to manage the surface impoundment area to maintain adequate freeboard;

(iii) operation of seepage collection systems;

(iv) operation of interceptor systems;

(v) operation of systems to return water to the concentrator or other locations as appropriate; and

(vi) any other water management features.

(k) If an interceptor system to maintain capture of ground water impacted by a tailings impoundment exists on the effective date of the Copper Rule, the permittee shall submit an interceptor system monitoring and evaluation report pursuant to 20.6.7.29 NMAC.

(2) **Smelting units.** A permittee operating a smelting unit shall operate pursuant to the following requirements.

(a) The smelting unit shall remain within the area identified in the discharge permit.

(b) Slag and flue dust generated as a result of smelting activities shall be characterized, managed, and properly stored and disposed of.

(c) Any leaks or spills outside the containment systems of the smelter unit shall be recorded and reported pursuant to 20.6.2.1203 NMAC.

(3) **Crushing, milling and concentrating unit operating**

**requirements.** A permittee operating a crushing, milling, or concentrating unit shall operate pursuant to the following requirements.

(a) The crushing, milling and concentrating operations shall remain within the area identified in the discharge permit.

(b) All containment system structures shall be inspected monthly.

(c) Any leaks or spills of process water outside the containment system shall be recorded and reported pursuant to 20.6.2.1203 NMAC.

[20.6.7.22 NMAC - N, 12/1/13]

### 20.6.7.23 REQUIREMENTS FOR NEW PIPELINES AND TANKS:

**A. Engineering design requirements.** At a minimum, the following requirements shall be met in designing new pipeline or tank systems at copper mine facilities that contain process water or impacted stormwater unless the applicant or permittee can demonstrate that an alternate design will provide an equal or greater level of containment.

(1) **New Pipelines.** New pipelines shall:

(a) be constructed of impermeable materials that are compatible with the particular contents that are contained and carried in the pipeline and are resistant to degradation by ultraviolet light if they will be exposed to sunlight;

(b) for pipelines located outside of the open pit surface drainage area and outside an area authorized for discharge of process water, impacted stormwater or tailings, incorporate a mechanism for monitoring the integrity of the pipeline system including visual inspections, pressure change sensors, or other appropriate means; and

(c) for pipelines located outside of the open pit surface drainage area and outside an area authorized for discharge of process water, impacted stormwater or tailings, incorporate a mechanism of secondary containment to contain and control leaks and spills including berms, placement within or drainage toward areas authorized for discharge of the conveyed fluids, and impoundments that are constructed consistent with the requirements of Subsection D of 20.6.7.17.D NMAC.

(2) **Tanks.** New tank systems shall meet the following requirements.

(a) Tanks shall be designed and constructed of steel, concrete or impermeable materials that are compatible with the particular contents that are contained within the tank and resistant to degradation by ultraviolet light where exposed to sunlight.

(b) A tank system shall have a constructed foundation consisting of a stable, level base free of rocks, debris, sharp edges or irregularities that could puncture, crack or indent the tank materials.

(c) A tank system shall be designed to prevent overflow and the collection of surface water run-on.

(d) An above-ground tank system shall be bermed to contain 110 percent of the volume of the largest tank within the system or the largest interconnected tanks.

(e) A below-grade tank system shall either be placed in such a manner that the side walls are open for visual inspection or the tank shall be designed with a secondary containment and leak detection system.

### B. Construction.

(1) **New pipeline and tank units.**

Construction of a new pipeline or tank system shall be performed in accordance with the applicable requirements of Subsection A of 20.6.7.23 NMAC and 20.6.7.17 NMAC.

(2) **Existing pipeline and tank units.** A pipeline or tank system in existence on the effective date of the copper mine rule is not required to meet the design requirements of Subsection A of 20.6.7.23 NMAC and may continue to operate as previously permitted under a discharge permit provided that, for a tank in contact with the ground surface and located outside an open pit surface drainage area, it is inspected and tested at least once every ten years for integrity pursuant to Subsection C of 20.6.7.23 NMAC. If an existing tank or pipeline system cannot maintain integrity it shall be replaced in accordance with the engineering requirements of Subsection A of 20.6.7.23 NMAC and 20.6.7.17 NMAC as applicable. A permit issued for such an existing tank or pipeline system after the effective date of the copper mine rule may include the conditions of the existing discharge permit, which shall not be considered to be "additional conditions" under Subsection I of 20.6.7 NMAC.

**C. Operational requirements.** A permittee operating a pipeline or tank system shall operate the system pursuant to the following requirements, as applicable.

(1) Pipelines and tanks shall remain within the area identified in the discharge permit.

(2) Pipelines, tanks and secondary containment systems shall be inspected on a monthly basis.

(3) The permittee shall maintain and operate a below-grade tank(s) to prevent overtopping of the tank(s).

(4) Any evidence of leaks or spills of fluids, process water or tailings from a pipeline or tank system outside of permitted secondary containment systems or outside an area permitted for discharge shall be recorded, reported and corrected pursuant to Subsection G of 20.6.7.30 NMAC.

(5) Any evidence of leaks or spills of fluids, process water or tailings from a pipeline or tank system inside of permitted secondary containment systems or inside

an area permitted for discharge shall be recorded and reported to the department in the semiannual reports submitted pursuant to Subsection A of 20.6.7.29 NMAC.

(6) Existing pipelines that do not meet the engineering requirements of Subsection A of 20.6.7.23 NMAC shall be evaluated for integrity at least once every five years. A pipeline evaluation plan for such pipelines shall be included in an application for renewal of a discharge permit for a copper mine facility.

(7) Existing below-grade tanks that do not meet the engineering requirements of Subsection A of 20.6.7.23 NMAC shall be emptied and visually inspected for integrity at least once every five years.

(8) A written record of all pipeline and tank system inspections and integrity testing shall be maintained by the permittee for a period of at least five years.

(9) Any wastes generated from the cleaning of pipeline or tank systems shall be disposed of offsite in accordance with applicable laws or onsite in a manner approved by the department.

[20.6.7.23 NMAC - N, 12/1/13]

#### **20.6.7.24 REQUIREMENTS FOR OPEN PITS: Operational requirements.**

A permittee operating an open pit shall operate the open pit pursuant to the following requirements, as applicable.

**A.** The open pit shall remain within the area identified in the discharge permit.

**B.** Stormwater shall be diverted outward and away from the perimeter of the open pit and, to the extent practicable, shall not be directed into the open pit.

**C.** Water generated from within the perimeter of the open pit and pit dewatering activities shall be managed according to a mine operation water management plan. The water management plan shall be submitted to the department for approval in a discharge permit application for a new copper mine facility or in an application for a discharge permit renewal.

**D.** During operation of an open pit, the standards of 20.6.2.3103 NMAC do not apply within the area of open pit hydrologic containment.

**E.** Leach stockpiles, waste rock piles, and other regulated mine units in and surrounding an open pit surface drainage area shall be designed and located to minimize the size of the open pit surface drainage area to the extent practicable.

[20.6.7.24 NMAC - N, 12/1/13]

#### **20.6.7.25 REQUIREMENTS FOR UNDERGROUND COPPER MINE FACILITIES:**

**A. Material characterization requirements:** All

waste rock removed from an underground mine and taken to the surface shall be characterized and managed pursuant to the copper mine rule. Any waste rock removed from an underground copper mine facility, any tailings or any other waste that is intended to be deposited in the mine shall be evaluated for its potential to generate acid or to release water contaminants that would cause an exceedance of applicable standards following placement in the underground mine. A plan for determining the potential of the material to release water contaminants, and the method for such evaluations, shall be submitted to the department for approval in a material characterization plan pursuant to Paragraph (1) of Section A of 20.6.7.21 NMAC.

**B. Deposition of material in an underground copper mine.** A permittee of an underground copper mine facility shall not:

(1) deposit any waste rock or tailings in an underground mine that may generate a leachate that may cause an exceedance of applicable standards as determined by Subsection A of this section;

(2) deposit any other wastes in an underground mine unless deposition of the waste is expressly authorized by a discharge permit approved by the department.

**C. Operational requirements.** A permittee authorized to deposit waste rock, tailings or other waste in an underground copper mine shall maintain records of the monthly volume of waste rock, tailings or waste placed in the mine, and include this information in the site monitoring reports submitted pursuant to 20.6.7.29 NMAC.

[20.6.7.25 NMAC - N, 12/1/13]

#### **20.6.7.26 REQUIREMENTS FOR TRUCK AND EQUIPMENT WASHING UNITS:**

**A. Engineering design requirements.** At a minimum, the following requirements shall be met in designing new truck and equipment washing units at copper mine facilities unless the applicant or permittee can demonstrate that an alternate design will provide an equal or greater level of containment.

(1) Truck and equipment washing shall be conducted on a concrete pad or a pad constructed of materials of equivalent or lower permeability designed to capture all wash water.

(2) Captured wash water shall freely drain from the containment pad and when necessary be conveyed to an oil water separator to remove oil and grease from the wash water.

(3) Wash water from the oil water separator shall be conveyed to a tank system designed and constructed pursuant to 20.6.7.23 NMAC, an impoundment

meeting the requirements of Subsection D of 20.6.2.7.17 NMAC, or may be directed to the mine process water circuit for use.

#### **B. Construction.**

(1) **New wash units for trucks or equipment.** Construction of new truck or equipment wash shall be performed in accordance with the applicable engineering requirements of Subsection A of 20.6.7.26 and 20.6.7.17 NMAC.

(2) **Existing wash units for trucks and equipment.** A truck or equipment wash unit in existence on the effective date of the copper mine rule and located outside of the open pit surface drainage area shall meet the design requirements of Subsection A of 20.6.7.26 NMAC within one year of the approval of a discharge permit renewal pursuant to the copper mine rule.

**C. Operational requirements.** A permittee operating a truck or equipment wash unit at a copper mine facility shall operate pursuant to the following requirements.

(1) The truck or equipment wash unit shall remain within the area identified in the discharge permit.

(2) Wash water generated at the unit shall be contained within the designed containment pad, separator and tank system, or impoundment until treated to meet applicable standards for discharge or conveyed to the process water circuit.

(3) The tank systems associated with the unit shall meet the operational requirements of 20.6.7.26 NMAC.

(4) Any leaks or spills of wash water from the containment pad, separator, tank system or impoundment shall be recorded, reported and corrected pursuant to Subsection G of 20.6.7.30 NMAC.

(5) Any wastes generated from the oil water separator or the tank system shall be disposed of offsite in accordance with applicable laws or onsite in a manner approved by the department.

[20.6.7.26 NMAC - N, 12/1/13]

#### **20.6.7.27 [RESERVED]**

#### **20.6.7.28 WATER QUALITY MONITORING REQUIREMENTS FOR ALL COPPER MINE FACILITIES:**

The following water quality monitoring requirements apply to all copper mine facilities unless otherwise specified.

**A. Monitoring wells - location proposals.** An applicant for a new, renewed or modified discharge permit or permittee shall submit a plan for department approval identifying the proposed location of monitoring wells required pursuant to Subsection B of this section, and shall include the following information.

(1) The location of each monitoring well relative to the unit of the copper mine facility it is intended to monitor



shall be indicated on the scaled map required by Subsection J of 20.6.7.11 NMAC.

(2) The ground water flow direction beneath the copper mine facility used to determine the monitoring well location(s), including supporting documentation used to determine ground water flow direction.

**B. Monitoring wells – required locations.** A permittee shall monitor ground water quality as close as practicable around the perimeter and downgradient of each open pit, leach stockpile, waste rock stockpile, tailings impoundment, process water impoundment, and impacted stormwater impoundment. The department may require additional wells around the perimeter of mine units that are underlain by areas where ground water flow directions are uncertain, including fracture flow systems, and around copper mine units that have the potential to cause ground water mounding. The department may require additional monitoring wells at any other unit of a copper mine facility that has the potential to cause an exceedance of applicable standards as additional permit conditions in accordance with Subsection I of 20.6.7.10 NMAC. Monitoring wells shall be located pursuant to this section to detect an exceedance(s) or a trend towards exceedance(s) of the applicable standards at the earliest possible occurrence, so that investigation of the extent of contamination and actions to address the source of contamination may be implemented as soon as possible.

(1) **Use of existing monitoring wells.** A monitoring well in existence before the effective date of the copper mine rule shall be deemed to be in an approved location for ground water monitoring purposes provided the following requirements are met:

(a) the monitoring well location was previously approved by the department; and

(b) the monitoring well is constructed as previously approved by the department; or

(c) if the monitoring well and construction was not previously approved by the department, the applicant or permittee can demonstrate that the well meets the location and construction requirements of this section.

(2) **Ground water monitoring – leach stockpiles, waste rock stockpiles, tailings impoundments.** A permittee shall install monitoring wells around the perimeter and downgradient of each new leach stockpile, waste rock stockpile and tailings impoundment located outside of the open pit surface drainage area, including its leachate and solution capture and containment systems, to adequately monitor ground water that may be impacted by water contaminants from those units. Each monitoring well shall be installed as

close as practicable to the proposed leach stockpile, waste rock stockpile or tailings impoundment, including its leachate and solution capture and containment systems, taking into account surface topography, hydrogeologic conditions, geologic controls, infrastructure, engineering design plans, depth to ground water, working distance and safety.

(a) For a new copper mine facility, the monitoring well networks shall be installed at least 180 days before emplacement of ore, waste rock or discharge of tailings at an individual leach stockpile, waste rock stockpile or tailings impoundment to allow sampling prior to discharge.

(b) A permittee constructing a new leach stockpile, waste rock stockpile or tailings impoundment at an existing copper mine facility, or expanding the footprint of an existing leach stockpile, waste rock stockpile, or tailings impoundment, shall install the monitoring well networks required to monitor ground water around and downgradient of the leach stockpile, waste rock stockpile or tailings impoundment before emplacement of ore, waste rock or discharge of tailings unless an existing monitor well network adequately monitors water quality in the area of the new leach stockpile, waste rock stockpile or tailings impoundment.

(3) **Ground water monitoring – process water and impacted stormwater impoundments.** A minimum of one monitoring well shall be located downgradient and within 75 feet (measured as horizontal map distance) or as close as practicable taking into account surface topography, hydrogeologic conditions, infrastructure, working distance and safety of each new process water or impacted stormwater impoundment located outside of an open pit surface drainage area.

(a) For a new copper mine facility, monitoring wells shall be installed at least 90 days before discharging to an individual process water or impacted stormwater impoundment at the copper mine facility to allow for sampling prior to discharge.

(b) A permittee constructing a new process water or impacted stormwater impoundment at an existing copper mine facility shall install the monitoring well(s) required to monitor ground water downgradient of the impoundment before discharging process water to the impoundment, before collecting impacted stormwater in the impoundment unless an existing monitor well network adequately monitors water quality in the area of the new impoundment.

(4) **Ground water monitoring – open pit.** A permittee shall install a sufficient number of monitoring wells around the perimeter of an open pit to monitor ground water quality and the hydrologic

gradient around the pit. For a new open pit, an applicant or permittee shall submit a monitor well network installation plan to the department for approval. The plan shall include proposed locations of monitoring wells, a statement of the reasons for selection of the monitoring well locations, and a schedule for installation.

(5) **Ground water monitoring – upgradient of each potential contaminant source.** A minimum of one monitoring well shall be located upgradient of each new leach stockpile, waste rock stockpile, tailings impoundment, and process water and impacted stormwater impoundment at a copper mine facility to establish upgradient ground water quality conditions not likely to be affected by each contamination source that is being monitored. If an applicant or permittee has existing monitoring wells located appropriately to obtain sufficient background data at a copper mine facility and establish and monitor upgradient conditions, the department may waive the requirement for additional upgradient wells.

(a) For a new copper mine facility, upgradient source monitoring wells shall be installed a minimum of 180 days before emplacement of ore, waste rock or discharge of tailings or other water contaminants at an individual leach stockpile, waste rock stockpile, tailings impoundment or other impoundment.

(b) A permittee constructing a new leach stockpile, waste rock stockpile, tailings impoundment or other impoundment at an existing copper mine facility shall install the monitoring well(s) required to monitor ground water quality upgradient of a leach stockpile, waste rock stockpile, tailings impoundment or other impoundment before emplacement of ore, waste rock or discharging of tailings or water contaminants into the individual source required to be monitored.

(6) **Ground water monitoring – upgradient of the copper mine facility.** A sufficient number of monitoring wells shall be located upgradient of all potential ground water contamination sources at a copper mine facility to establish upgradient ground water quality conditions that are not affected by any potential contamination sources at the copper mine facility. For a new copper mine facility, upgradient monitoring wells shall be installed at least 180 days before emplacement of ore, waste rock or discharge of tailings or other water contaminants at an individual leach stockpile, waste rock stockpile, tailings impoundment or other impoundment.

**C. Monitoring wells – identification tags.** A permittee shall clearly identify all monitoring wells required by the copper mine rule with a permanent well identification tag that contains well identification nomenclature included on

the scaled map required by Subsection J of 20.6.7.11 NMAC.

**D. Monitoring wells – construction and completion.** A permittee shall construct monitoring wells pursuant to 19.27.4 NMAC and the following requirements unless the department approves of an alternate monitoring well construction and completion design based upon site-specific hydrogeologic conditions.

(1) All well drilling activities shall be performed by an individual with a current and valid well driller license issued by the state of New Mexico pursuant to 19.27.4 NMAC.

(2) The well driller shall employ drilling methods that allow for accurate determinations of water table locations unless otherwise approved by the department in advance of drilling. All drill bits, drill rods, and down-hole tools shall be thoroughly cleaned immediately before drilling. The borehole diameter shall allow a minimum annular space of two inches between the outer circumference of the well materials (casing or screen) and the borehole wall to allow for the emplacement of sand and sealant.

(3) The well shall be developed so that formation water flows freely through the screen and is not turbid, and sediment and drilling disturbances are removed from the well to the maximum extent practicable.

(4) Unless otherwise approved by the department, schedule 40 (or heavier) polyvinyl chloride (PVC) pipe, stainless steel pipe, or carbon steel pipe shall be used as casing. The casing shall have an inside diameter not less than two inches. The casing material selected for use shall be compatible with, and chemically inert with respect to the anticipated chemistry of the ground water and appropriate for the contaminants of interest at the copper mine facility. The casing material and thickness selected for use shall have sufficient collapse strength to withstand the pressure exerted by grouts used as annular seals and thermal properties sufficient to withstand the heat generated by the hydration of cement-based grouts.

(5) Casing sections shall be joined using welded, threaded, or mechanically locking joints. The method selected shall provide sufficient joint strength for the specific well installation.

(6) The casing shall extend from the top of the screen to at least 18 inches above ground surface. The top of the casing shall be fitted with a removable cap, and the exposed casing shall be protected by a locking steel well shroud. The shroud shall be large enough in diameter to allow easy access for removal of the cap. Alternatively, monitoring wells may be completed below grade. In this case, the casing shall extend from the top of the screen to between six

and twelve inches below the ground surface; the monitoring wells shall be sealed with locking, expandable well plugs; a flush-mount, watertight well vault that is rated to withstand traffic loads shall be emplaced around the wellhead; and the cover shall be secured with at least one bolt. The vault cover shall indicate that the wellhead of a monitoring well is contained within the vault.

**(7) Well Screen.**

**(a) For water table monitoring wells.** A maximum 20-foot section of continuous well screen shall be installed across the water table with at least five feet of well screen placed above the water table interface to allow for seasonal fluctuations. The department may approve a greater screen length based on the hydraulic properties of the aquifer, the hydrogeologic setting, predictable water level decline rates, or the depth of the well. Screen shall consist of continuous-slot, machine slotted, or other manufactured schedule 40 (or heavier) PVC or stainless steel. Screens created by cutting slots into solid casing with saws or other tools, other than as performed by the manufacturer, shall not be used. The screen material selected for use shall be compatible with the anticipated chemistry of the ground water and appropriate for the contaminants of interest at the copper mine facility. The screen slot size shall be selected to retain 90 percent of the filter pack.

**(b) For deep or confined aquifer monitoring wells.** Monitoring wells installed in confined aquifers or below the water table elevation of the shallowest aquifer to monitor ground water conditions in different aquifers at depth shall be installed with a maximum ten foot section of continuous well screen. The department may approve a greater screen length based on the hydraulic properties of the aquifer, the hydrogeologic setting, or the depth of the well. The top of the screen shall be placed at the location of the geologic boundary between the top of the aquifer and the bottom of confining aquifers. Screen shall consist of continuous-slot, machine slotted, or other manufactured schedule 40 or heavier PVC or stainless steel. Screens created by cutting slots into solid casing with saws or other tools shall not be used. The screen material selected for use shall be compatible with the anticipated chemistry of the ground water and appropriate for the contaminants of interest at the copper mine facility. The screen slot size shall be selected to retain 90 percent of the filter pack.

(8) Screen sections shall be joined using welded, threaded, or mechanically locking joints. The method selected shall provide sufficient joint strength for the specific well installation and shall not introduce constituents that may reasonably be considered contaminants of interest at the

copper mine facility. A cap shall be attached to the bottom of the well screen.

(9) Casing and well screen shall be centered in the borehole by installing centralizers near the top and bottom of the well screen.

(10) A filter pack shall be installed around the screen by filling the annular space from the bottom of the screen to at least two feet above the top of the screen with clean silica sand using methods that prevent bridging. The filter pack shall be properly sized to exclude the entrance of fine sand, silt, and clay from the formation into the monitoring well. All filter pack placed deeper than twenty feet below land surface shall be placed by tremie pipe. The well shall be surged or bailed to settle the filter pack and additional sand added, if necessary, before the bentonite seal is emplaced.

(11) A bentonite seal shall be constructed immediately above the filter pack by emplacing bentonite chips or pellets, three eighths of an inch in size or smaller, in a manner that prevents bridging of the chips/pellets in the annular space. All bentonite seals placed deeper than twenty feet below land surface shall be placed by tremie pipe. The bentonite seal shall be a minimum of three feet in thickness and hydrated with clean water. Adequate time shall be allowed for expansion of the bentonite seal before installation of the annular space seal.

(12) The annular space above the bentonite seal shall be sealed with cement grout or bentonite-based sealing material acceptable to the state engineer in accordance with 19.27.4 NMAC. All annual sealing materials placed deeper than twenty feet below land surface shall be placed by tremie pipe. Annular space seals shall extend from the top of the bentonite seal to the ground surface for wells completed above grade, or to a level three to six inches below the top of casing for wells completed at or below grade.

(13) A concrete pad with a minimum two-foot radius and a minimum four-inch thickness shall be poured around the shroud or well vault and wellhead. The concrete and surrounding soil shall be sloped to direct rainfall and runoff away from the wellhead.

**E. Monitoring wells – office of the state engineer requirements.** A permittee shall obtain any well permits required by the office of the state engineer prior to well drilling.

**F. Ground water sample collection procedure.** A permittee shall perform all ground water sample collection, preservation, transport and analysis according to the following procedure.

(1) Depth to ground water shall be measured from the top of well casing at point of survey to the nearest 0.01 feet using an electronic water level indicator consisting

of dual conductor wire encased in a cable or tape graduated to 0.01 feet, a probe attached to the end of the conductor wire, and a visual or audible indicator; pneumatically or by using a fiberglass or steel measuring tape using the chalk method, or other method approved by the department.

(2) Monitoring wells shall be purged before sample collection by one of the following methods, unless otherwise approved by the department.

(a) Three well volumes of water shall be purged from the well using conventional methods before sample collection.

(b) The monitoring well shall be purged using low-flow purging methods as approved by the department until measurements of indicator parameters have stabilized. Low-flow purging shall be conducted with a low-flow pump using a low-stress approach, micro-purge method or minimal drawdown method. Indicator parameters shall be measured periodically during purging. A parameter stabilization log shall be kept during each sampling event for each monitoring well and include: date; water quality indicator parameter measurements; time for all measurements; and the purge volume extracted.

(c) For low yield wells, the well shall be purged of all available water.

(3) Following purging and immediately before sample collection the following field parameters shall be measured and recorded: pH, specific conductance, and temperature.

(4) In-line flow-through cells shall be disconnected or by-passed during sample collection, if used during purging.

(5) Samples from the well shall be obtained, prepared, preserved and transported to an analytical laboratory for analysis pursuant to the methods authorized by Subsection B of 20.6.7.29 NMAC.

#### **G. Ground water sampling – existing copper mine facilities.**

For existing copper mine facilities a permittee shall collect ground water samples from all monitoring wells, seeps and springs for the analytes and at the frequency specified in an existing discharge permit. A permittee shall submit to the department semi-annual monitoring reports containing the information required in Section 20.6.7.29 NMAC.

#### **H. Ground water sampling – reduction of sampling analytes.**

A permittee may request approval from the department to reduce the sampling frequency of individual water quality analytes. The basis for consideration of reduction of sampling frequency may include a demonstration that the analyte is not present in the impoundment or mine unit being monitored, or could not be generated from the materials present through

degradation, oxidation, decay or any other expected process. A permittee may also request approval from the department to reduce sampling frequency of an individual analyte if it has not been detected in a particular monitoring well, is consistently below the applicable standard, or is stable and predictable for eight consecutive quarters. Ground water sampling analyte lists and the frequency of sampling shall be reevaluated upon permit renewal.

#### **I. Ground water sampling – new monitoring wells.**

A permittee shall submit to the department for approval a proposal for quarterly ground water sampling from each newly installed monitoring required pursuant to this section. Sampling analyte lists shall be based on the geochemical characteristics of the solution or material contained in the impoundment or mine unit intended to be monitored, including constituents that can be generated from the materials present through degradation, oxidation, decay or any other expected process. Proposed analytes shall include field parameters as required in Subsection F of this section, alkalinity-bicarbonate, alkalinity-carbonate, metals, and other analytes from Section 20.6.2.3103 NMAC as applicable.

(1) Samples shall be collected from each newly installed monitoring well required pursuant to this section for a copper mine facility before emplacement of ore, waste rock or discharge of tailings or other water contaminants at an individual leach stockpile, waste rock stockpile, tailings impoundment or other impoundment.

(2) For copper mine facilities installing a new monitoring well during the term of a discharge permit, during construction of a new impoundment, or as a result of required corrective actions, samples shall be collected from the newly installed monitoring wells within 30 days of well completion and prior to commencing operation of the newly constructed unit as applicable.

#### **J. Monitoring well survey and ground water flow determination.**

The permittee shall survey or otherwise locate monitoring wells and provide location information as required by this section. The coordinate location (northing and easting) shall be provided in the established coordinate system for the copper mine facility with an accuracy (rounded to the nearest foot/tenth meter) and shall also be provided to the department in one of the following coordinate systems: NM state plane (NAD 83) to the nearest foot, UTM (NAD 83) to the nearest tenth of a meter, or latitude/longitude (Lat/Long - WGS84) to the nearest tenth of a second. Elevation of the ground surface at the well location shall be provided to the nearest foot above mean sea level. Elevation of the water level

measuring point shall be provided to the nearest hundredth of a foot above mean sea level. The water level measuring point for monitoring wells shall be clearly marked on the casing. Depth to ground water at each monitoring well location shall be measured from the point of survey to the nearest hundredth of a foot in all surveyed wells pursuant to Subsection F of this section, and the data shall be used to develop a map showing the location of all monitoring wells and the direction and gradient of ground water flow at the copper mine facility.

#### **K. Monitoring well completion report.**

A permittee shall submit to the department a monitoring well completion report for all newly installed monitoring wells. The report shall be submitted within 60 days of completion of installation of the monitoring well. The report shall contain the following information.

(1) Construction and lithologic logs for the new monitoring wells including well record information specified by 19.27.4 NMAC.

(2) Depth to ground water measured in each new monitoring well.

(3) Survey data and a survey map showing the locations of each new monitoring well and a ground water elevation contour map developed pursuant to Subsection L of this section.

(4) Analytical results of ground water samples collected from the new monitoring wells, including laboratory quality assurance and quality control summary reports, and field parameter measurements.

#### **L. Ground water elevation contour maps.**

A permittee shall develop ground water elevation contour maps on a semi-annual basis using data associated with all monitoring wells installed in the appropriate geologic formation and as required pursuant to this section. Top of casing elevation data, obtained from monitoring well surveys completed pursuant to this section and quarterly depth to ground water measurements in monitoring wells shall be used to calculate ground water elevations at monitoring well locations. Ground water elevations between monitoring well locations shall be estimated using common interpolation methods. Ground water elevations shall be expressed in feet. A contour interval appropriate to the data shall be used. Ground water elevation data used to create potentiometric maps shall be limited to data collected during the quarter being reported. Ground water elevation contour maps shall depict the ground water flow direction, using arrows, based on the orientation of the ground water elevation contours, and the location and identification of each monitoring well and monitored structure or impoundment. A permittee

shall submit ground water elevation contour maps to the department in the semi-annual monitoring reports, and submit annually a map showing the extent of the existing open pit surface drainage area as defined in Paragraph (43) of Subsection B of 20.6.7.7 NMAC.

**M. Perennial stream sampling and reporting – routine.** A permittee shall submit to the department for approval a proposal to collect quarterly surface water samples from each perennial surface waters of the state within a copper mine facility as necessary to monitor potential ground water inflow to the perennial surface water. Analytes to be sampled and analyzed shall be based on the geochemical characteristics of the solution or material contained in the impoundment or mine unit closest to or most likely to effect the perennial stream being sampled. A permittee shall submit to the department in the semi-annual monitoring reports the field parameter measurements, the analytical results (including the laboratory quality assurance and quality control summary report) and a map showing the location of each sampling location in relation to the copper mine facility.

**N. Process water, tailings slurry, impacted stormwater, seep, and spring sampling and reporting.** An applicant for a new, renewed or modified discharge permit or permittee shall submit for department approval a sampling and analysis plan to monitor quarterly the quality of process water, tailings slurry, impacted stormwater, seeps and springs at a copper mine facility. Proposed analytes shall include field parameters as required in Subsection F of this section, alkalinity-bicarbonate, alkalinity-carbonate, metals, and other analytes from Section 20.6.2.3103 NMAC as applicable.  
[20.6.7.28 NMAC - N, 12/1/13]

## 20.6.7.29 GENERAL MONITORING REQUIREMENTS FOR ALL COPPER MINE FACILITIES:

**A. Monitoring reports – schedule of submittal.** A permittee shall submit monitoring reports to the department on a semi-annual schedule that shall contain all quarterly monitoring data and information collected pursuant to the copper mine rule. Semi-annual monitoring reports shall be submitted according to the following schedule:

(1) January 1 through June 30 (first and second quarter sample periods) – report due by August 31; and

(2) July 1 through December 31 (third and fourth quarter sample periods) – report due by February 28.

**B. Monitoring reports – general requirements.** A permittee shall submit monitoring reports to the department

that include a summary providing of all activities related to discharges at the copper mine facility during the preceding six months including, but not limited to the following:

- (1) operational activities;
- (2) minor spills and corrective actions not reportable under Section 20.6.2.1203 NMAC;
- (3) major spills and corrective actions reportable under Section 20.6.2.1203 NMAC;
- (4) maintenance and repairs of discharge systems or units;
- (5) a synopsis of completed studies relevant to the copper mine facility or unit;
- (6) monitoring well installation and abandonment;
- (7) construction or demolition of structures;
- (8) general locations and volumes of leach ore placement;
- (9) general locations and volumes of waste rock placement; and
- (10) a summary of seep and spring flows, if applicable.

**C. Monitoring Reports – analytical requirements.** A permittee shall submit monitoring reports to the department that include the following analytical information.

(1) A single table shall be provided semi-annually in a paper and electronic spreadsheet format approved by the department. The table shall include water quality data with those parameters analyzed and water levels measured shown in columns. Single sampling events for each monitoring site shall be shown in rows with the site name in the far left column, the sampling date in the second column, the water level in the third column, followed by individual analytes in the following columns. Tabulated electrical conductivity shall include the measured field values and corrected values to 25 degrees Celsius. Values exceeding standards shall be bolded. Any constituent not analyzed for a particular site shall be shown as “NA”, any site not sampled shall be shown as “NS” with an associated reason, and any site not measured for water levels shall be shown as “NM” with an associated reason.

(2) Semi-annual monitoring reports shall include water quality trends, laboratory CQA/CQC, trends in hydrographs, and potentiometric surface maps. At a minimum, graphs with the previous five years of indicator parameter data shall be presented for TDS, sulfate, and water levels. pH may substituted for water levels at reservoirs or springs.

**D. Sampling and analysis methods.** A permittee shall sample and analyze water pursuant to Subsection B of 20.6.2.3107 NMAC.

**E. Process water, leach solutions, tailings and liner solution**

**collection system volume measurement and reporting.** A permittee shall measure the volume of process water, leach solutions applied, and tailings discharges and solution collection system fluids collected using flow meters pursuant to Paragraph (5) of Subsection C of 20.6.7.16 NMAC. Meter readings shall be recorded at intervals no less than once per week. The average daily discharge volume for each recording interval shall be calculated by dividing the difference between the meter readings by the number of days between meter readings. The permittee shall provide the meter readings including the date, time and units of each measurement, and calculations for the average daily volumes discharged and collected in gallons per day, in the semi-annual monitoring reports submitted to the department.

**F. Flow meter accuracy.** Flow meters shall be monitored for accuracy by comparing flow meter readings with prior readings and noting any significant variations in readings that are not consistent with changes in operating conditions. If a flow meter shows inconsistent readings or otherwise appears to be non-operational, the permittee shall make a record of the inconsistent readings and shall repair or replace a flow meter that does not appear to be operating properly with a flow meter calibrated according to the flow metering plan pursuant to Paragraph (5) of Subsection C of 20.6.7.17 NMAC. The permittee shall submit the results of any inconsistent meter readings and the repair or replacement of any flow meter(s) to the department annually in the monitoring report due by February 1, including information on the location and meter identification nomenclature specified in Paragraph (1) of Subsection E of 20.6.7.18 NMAC.

**G. Meteorological data.** A permittee shall annually submit to the department meteorological data collected at sites throughout the copper mine facility during each calendar year according to the approved meteorological data plan submitted pursuant to Subsection W of 20.6.7.11 NMAC. The data shall be submitted to the department in the monitoring report due on February 28 of each year.

**H. Interceptor system monitoring and evaluation.** A permittee operating an interceptor well system for a tailing impoundment or a waste rock stockpile shall provide an annual monitoring and evaluation report of the interceptor system. The report shall be submitted to the department in the monitoring report due by February 28 of each year and shall include the following information obtained from within and surrounding the interceptor system as applicable:

- (1) monthly measurements of the volume of impacted ground water pumped

by individual wells, interceptor trenches, or other interceptor system components and the total volume pumped within the monitoring period;

(2) the operational status of interceptor system components;

(3) water level measurements of monitoring and interceptor wells or other system components as applicable;

(4) semi-annual ground water elevation contour maps pursuant to the requirements of Subsection L of 20.6.7.28 NMAC;

(5) semi-annual iso-concentration maps of contaminants of concern; and

(6) an annual performance evaluation assessment of the interceptor well system that contains information on:

(a) the performance of individual interceptor wells and/or other interceptor system components over time;

(b) accumulated drawdown maps showing the historical change in water level;

(c) time series hydrographs and graphs of water quality trends for contaminants of concern covering at a minimum data from the past five year time period;

(d) water quality distribution within the system over time;

(e) cross-sectional diagrams depicting the geologic, water level elevation and water quality in vertical profile;

(f) an analysis of the data, maps, graphs and diagrams contained in the assessment; and

(g) recommendations for changes to optimize performance of the system.

[20.6.7.29 NMAC - N, 12/1/13]

### **20.6.7.30 CONTINGENCY REQUIREMENTS FOR COPPER MINE FACILITIES:**

**A. Exceedance of ground water standards.** If monitoring of a water contaminant source indicates that applicable standards are exceeded, or if the extent or magnitude of existing ground water contamination is significantly increasing, the permittee shall collect a confirmatory sample from the monitoring location(s) within 15 days to confirm the initial sampling results, unless the permittee elects to accept the initial sampling results as an accurate measurement of water quality. Within 30 days of the confirmation of the exceedance of applicable standards or significant increases in existing contamination, the permittee shall take the following actions. The department may approve a longer time period not to exceed 90 days for good cause shown.

(1) A corrective action plan shall be submitted to the department for approval. The corrective action plan shall describe any repairs made or proposed to address the cause of the exceedance or increase and shall propose source control measures

and a schedule for implementation. The department shall approve or disapprove the corrective action plan within 60 days of receipt. Following the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan according to the approved schedule. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised corrective action plan to the department within 60 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the revised corrective action plan within 60 days of receipt.

(2) If the corrective action plan proposes actions to correct deficiencies with a liner, the proposed actions shall include repair or replacement of the existing liner, or construction and lining of a new impoundment. If liner repair is practicable, repairs shall be made pursuant to 20.6.7.17 NMAC or using a material that is equivalent to the existing liner with respect to material thickness and composition. Repairs shall be completed in accordance with the approved schedule. If liner repair is not practicable, the corrective action plan shall propose reconstruction and relining of the impoundment pursuant to 20.6.7.17 NMAC or construction and lining of a new impoundment pursuant to 20.6.7.17 NMAC. Reconstruction or construction plans and specifications for the impoundment shall be completed pursuant to 20.6.7.17 NMAC and submitted with the corrective action plan along with a schedule for implementation. If a new impoundment is constructed the existing impoundment shall be closed pursuant to 20.6.7.33 NMAC.

(3) The permittee may be required to submit to the department for approval an abatement plan, which includes a site investigation to define the source, nature and extent of contamination; a proposed abatement option, and a schedule for its implementation. The site investigation and abatement option shall be consistent with the requirements and provisions of Sections 20.6.2.4101, 20.6.2.4103, 20.6.2.4106, 20.6.2.4107, 20.6.2.4108 and 20.6.2.4112 NMAC.

(4) A corrective action plan or abatement plan approved or submitted prior to the date of the copper mine rule shall satisfy the requirements of this subsection provided that any substantial change in monitoring results after the effective date of the copper mine rule may require additional corrective action under this Subsection or modification of a previously approved or submitted corrective action plan or abatement plan.

**B. Monitoring well replacement.** If information available to

the department indicates that a monitoring well(s) required by 20.6.7.28 NMAC is not located downgradient of or does not adequately monitor the contamination source it is intended to monitor, is not completed pursuant to 20.6.7.28 NMAC, or contains insufficient water to effectively monitor ground water quality, a permittee shall install a replacement monitoring well(s). The replacement monitoring well(s) shall be installed within 120 days of the date of postal notice of notification from the department and a survey of the replacement monitoring well(s) shall be performed within 150 days of the date of postal notice of notification from the department. The replacement monitoring well(s) shall be located, installed, completed, surveyed and sampled pursuant to 20.6.7.28 NMAC. The permittee shall develop a monitoring well completion report pursuant to Subsection K of 20.6.7.28 NMAC and submit it to the department within 180 days of the date of postal notice of notification from the department. The department may approve longer time periods for good cause shown.

**C. Exceedance of permitted maximum daily discharge volume.** If the maximum daily discharge volume authorized by the discharge permit at a particular permitted location is exceeded by more than 10% for any three average daily discharge volumes within any one year period, the permittee shall submit within 60 days of the third exceedance a corrective action plan for reducing the discharge volume or an application for a modified or renewed and modified discharge permit pursuant to 20.6.7.10 NMAC. Within 30 days of postal notice of department approval, the permittee shall initiate implementation of the corrective action plan.

**D. Insufficient impoundment capacity.** If a survey or capacity calculations indicate an existing impoundment or impoundment system is not capable of meeting the capacity requirements in Subsection D of 20.6.7.17 NMAC, within 90 days of the effective date of the discharge permit the permittee shall submit a corrective action plan for department approval. The plan may include, but is not limited to, proposals for constructing an additional impoundment, reducing the discharge volume, removing accumulated solids, or changing process water or impacted stormwater management practices. The corrective action plan shall include a schedule for implementation. The schedule shall propose completion within one year from the submittal date of the initial corrective action plan. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. Should the corrective action plan include removal of

accumulated solids, solids shall be removed from the impoundment in a manner that is protective of the impoundment liner. The plan shall include the method of removal, and locations and methods for storage and disposal of the solids.

**E. Inability to preserve required freeboard.** If a minimum of two feet of freeboard cannot be preserved in the process water or impacted stormwater impoundment, the permittee shall submit a corrective action plan to the department for approval. The corrective action plan shall be submitted within 30 days of the date of discovery of the initial exceedance of the freeboard requirement. The plan may include, but is not limited to, proposals for constructing an additional impoundment, reducing the maximum daily discharge volume, or changing process water or impacted stormwater management practices. The corrective action plan shall include actions to be immediately implemented to regain and maintain a minimum of two feet of freeboard until permanent corrective actions have been completed. The corrective action plan shall include a schedule for implementation. The schedule shall propose completion within one year from the submittal date of the initial corrective action plan. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan.

**F. Impoundment – structural integrity compromised.** Within 24 hours of discovery, a permittee shall report to the department any damage to the berms or the liner of an impoundment or any condition that may compromise the structural integrity of the impoundment. Within 15 days of discovery, the permittee shall submit to the department a corrective action plan describing any actions taken or proposed to be taken to repair the damage or condition. Within 30 days of receipt, the department shall approve or disapprove the proposed corrective action plan. Repairs to the impoundment liner or berms shall be completed pursuant to 20.6.7.17 NMAC. The corrective action plan shall include a schedule for implementation. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan.

**G. Unauthorized discharge – reporting and correction.** In the event of a spill or release that is not authorized by the discharge permit, the permittee shall notify the department and take corrective actions pursuant to 20.6.2.1203 NMAC. Process water or impacted stormwater or other material that is spilled or released that has the potential to impact water quality shall be contained and pumped to a sump, impoundment, or

leach stockpile permitted pursuant to the copper mine rule. The permittee shall repair or replace failed components within 48 hours from the time of failure or as soon as practicable.

**H. Leach stockpiles, tailings impoundment or waste rock stockpiles – unstable slopes.** Within 24 hours of discovery, a permittee shall report to the department any evidence of instability of the slope of a leach stockpile or tailings impoundment or any condition that may compromise the structural integrity of the leach stockpile, tailings impoundment or waste rock stockpile. Within 15 days of discovery, the permittee shall submit to the department a corrective action plan describing any actions taken or proposed to be taken to repair the damage or condition. Within 30 days of receipt, the department shall respond to the proposed corrective action plan. Repairs to the slopes shall be completed consistent with the requirements of 20.6.7.20, 20.6.7.21, 20.6.7.22, and 20.6.7.33 NMAC, as applicable. The corrective action plan shall include a schedule for implementation. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan.

**I. Erosion of cover system or compromised stormwater conveyance structure, ponding of stormwater, or other conditions.** Within 24 hours of discovery, a permittee shall report to the department any evidence of significant erosion of a cover system required by 20.6.7.33 NMAC or compromise of a stormwater conveyance structure; any significant ponding of stormwater on the cover system; or any other condition that may significantly compromise the cover system or stormwater conveyance structure. Within 15 days of the reported discovery, the permittee shall submit to the department a corrective action plan describing any actions taken or proposed to be taken to repair the damage or condition. Within 30 days of receipt, the department shall respond to the proposed corrective action plan. Repairs to the cover system or stormwater conveyance structure shall be completed consistent with the applicable requirements of 20.6.7.33 NMAC. The corrective action plan shall include a schedule for implementation. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan.

**J. Water management and water treatment system failure.** Within 24 hours of discovery, a permittee shall report to the department any significant failure of a water management or water treatment system constructed and operated pursuant to 20.6.7.33 NMAC or any

condition that may cause a significant failure of the water treatment system. Within 15 days of the reported discovery, the permittee shall submit to the department a corrective action plan describing any actions taken or proposed to be taken to repair the damage or condition. Within 30 days of receipt, the department shall respond to the proposed corrective action plan. Repairs to the water treatment system shall be completed consistent with the applicable requirements of 20.6.7.33 NMAC. The corrective action plan shall include a schedule for implementation. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan.

**K. Interim Emergency Water Management.** An applicant or permittee shall develop and submit to the department an interim emergency fluid management plan. The purpose of the interim emergency water management plan is to provide information to the department on how process water systems, interceptor wells, seepage collection systems and storm water management systems are operated and maintained to prevent discharges in the event the department assumes management of the copper mine facility. An applicant or permittee shall include in the plan process water flow charts showing electrical system requirements, pump operations, seepage collection and interceptor well operations and applicable operation and maintenance requirements. The interim process water management plan shall be updated as major process water system changes occur that would affect the interim emergency water management plan. The interim emergency water management plan shall be maintained on site and be available for department review. The plan shall be submitted within 180 days of discharge permit renewal for an existing copper mine facility and no less than 60 days prior to discharge at a new copper mine facility.

[20.6.7.30 NMAC - N, 12/1/13]

**20.6.7.31 [RESERVED]**

**20.6.7.32 [RESERVED]**

**20.6.7.33 CLOSURE REQUIREMENTS FOR COPPER MINE FACILITIES:** An applicant or permittee shall submit a closure plan for all portions of a copper mine facility covered by a discharge permit that addresses the following requirements.

**A. Design storm event.** Permanent storm water conveyances, ditches, channels and diversions required for closure of a discharging unit at a copper mine facility shall be designed to convey the peak flow generated by the 100 year return interval storm event. The appropriate design

storm duration shall be selected based on the maximum peak flow generated using generally accepted flood routing methods. Sediment traps or small basins intended as best management practices may not be subject to this requirement, based on department approval.

**B. Slope stability.** At closure, tailing impoundment(s) not regulated by the office of the state engineer, leach stockpile(s) or waste rock stockpile(s) shall be constructed to promote the long-term stability of the structure. Closure of all critical structures at a copper mine facility shall be designed for a long-term static factor of safety of 1.5 or greater and non-critical structures shall be designed for a long-term static factor of safety of 1.3 or greater. The units being closed shall also be designed for a factor of safety of 1.1 or greater under pseudostatic analysis. A stability analysis shall be conducted for the unit and shall include evaluation for static and seismic induced liquefaction.

**C. Surface re-grading.** During closure of any tailing impoundment, waste rock pile or leach stockpile at a copper mine facility, the surface shall be re-graded to a stable configuration that minimizes ponding and promotes the conveyance of surface water off the unit. The operator may propose for department approval a grading plan that allows ponding as an appropriate part of closure provided additional ground water protection measures, such as synthetic liner systems, are included as part of the design.

(1) The top surfaces of all tailing impoundments at a copper mine facility shall be constructed to a minimum final grade of 0.5% after accounting for the estimated magnitude and location of large-scale settlement due to totaling consolidation or differential settlement. Prior to final re-grading activities, the permittee shall ensure that adequate drainage of the tailing impoundment has occurred to ensure that large-scale settlement following grading is minimized. The CQC and CQA plan shall provide the methods and procedures to ensure that the design and construction activities will be completed according to the approved final design and specifications, including design aspects related to potential future settlement.

(2) The top surfaces of all waste rock and leach stockpiles at a copper mine facility shall be constructed to a minimum final grade of 1%.

(3) The outsoles of all tailing impoundments, waste rock and leach stockpiles at a copper mine facility shall be constructed to an interbench slope no steeper than three horizontal to one vertical (3H:1V). Alternative slope gradients may be allowed within an open pit surface drainage area, or if the permittee provides information showing

that the cover performance objectives in Subsection F of this section are met and the exception is approved by the department.

(a) At existing copper mine facilities, where re-grading of individual outsoles would intersect a highway, cultural resource, physical infrastructure or a surface water of the state, outsoles may be re-graded no steeper than 2.5:1 or as otherwise approved by the department in Paragraph (3) of this subsection.

(b) At existing copper mine facilities, the waste rock and leach stockpile outsoles within an open pit surface drainage area are not required to be graded and covered.

(4) For design purposes, allowable uninterrupted slope lengths shall be calculated using a generally accepted erosion estimation method and shall be based on the final slope angle and cover material characteristics representative of the cover materials proposed for use at the site. The maximum uninterrupted slope lengths shall be no greater than 300 feet for 4.0:1, 200 feet for 3:1 slopes and 175 feet for 2.5:1 slopes. Alternative slope lengths may be allowed if the permittee provides information showing that the cover performance objectives specified in Subsection F of this section will be achieved and the exception is approved by the department.

**D. Open pits.** The applicant or permittee shall provide detailed information and a closure plan for open pits that demonstrates how the following criteria will be addressed through water management or other activities at open pits to minimize the potential to cause an exceedance of applicable water quality standards:

(1) Open pits in which the evaporation from the surface of an open pit water body is predicted to exceed the water inflow shall be considered to be a hydrologic evaporative sink. If an open pit is determined to be a hydrologic evaporative sink, the standards of 20.6.2.3103 NMAC do not apply within the area of open pit hydrologic containment. This is limited to contaminants associated with standard copper mining practices and found to be present within the open pit, or that can be generated from the natural materials present in the open pit through degradation, oxidation, decay or other expected process.

(2) After closure, if water within an open pit is predicted to flow from the open pit into ground water and the discharge from an open pit may cause an exceedance of applicable standards at monitoring well locations specified by 20.6.7.28 NMAC, then the open pit shall be considered a flow-through pit. In a flow-through pit system the open pit water quality must meet ground water standards of 20.6.2.3103 NMAC or the open pit must be pumped in order to maintain an area of open pit hydrologic

containment.

**E. Surface water management.** The permittee of a copper mine facility shall maintain and implement a plan for the management of all stormwater and sediment generated from the copper mine facility during reclamation and following closure.

**F. Cover system.** At closure, a permittee shall install a cover system on waste rock piles, leach stockpiles, tailing impoundments and other units that have the potential to generate leachate and cause an exceedance of applicable standards at monitoring well locations specified by 20.6.7.28 NMAC using the following criteria, as appropriate. Any soil cover systems installed before the effective date of the copper mine rule are not subject to the requirements of the copper mine rule unless the department determines that an exceedance of applicable standards has occurred or is likely to occur as a result of the existing installed cover system, and that modification of the cover will prevent further impacts to ground water. Any cover system installed at an existing copper mine facility after the effective date of the copper mine rule shall be a store and release earthen cover system with a thickness of thirty-six inches and shall be constructed in accordance with the applicable requirements of Paragraphs (1) through (3) of this subsection. For leach and waste rock stockpiles inside the open pit surface drainage area, a thirty-six inch cover is only required on the top surfaces.

(1) The cover system shall be constructed of thirty-six inches of earthen materials that are capable of sustaining plant growth without continuous augmentation and have erosion resistant characteristics. Erosion rates shall be equal to or less than stable slopes in the surrounding environment after the vegetation has reached near-equilibrium cover levels. Erosion will be estimated using generally acceptable methods.

(2) Soil cover systems shall be designed to limit net-percolation by having the capacity to store within the fine fraction at least 95 percent of the long-term average winter (December, January and February) precipitation or at least 35% of the long-term average summer (June, July and August) precipitation, whichever is greater. The water holding capacity of the cover system will be determined by multiplying the thickness of the cover times the incremental water holding capacity of the approved cover materials. Appropriate field or laboratory test results or published estimates of available water capacity shall be provided by the permittee to show that the proposed cover material meets this performance standard.

(3) Cover thickness or other design criteria may be reduced or modified if:

(a) the cover system is installed over a lined unit and the design and function of the liner system will complement the cover system, or the permittee proposes a composite, layered or an alternate cover system with an equal or greater level of ground water protection described in Paragraphs (1) and (2) of this section; or

(b) a demonstration is made that an alternate proposed cover system will ensure that an exceedance of applicable standards will not occur in ground water; such a demonstration shall include:

(i) a comprehensive modeling study to estimate the quantity of net-percolation through a cover system that will not result in an exceedance of applicable standards in ground water;

(ii) a plan for performance monitoring of the cover system, including ground water monitoring; and

(iii) an agreement by the permittee to pay for the cost of a third party review of the modeling study and performance monitoring plan.

(4) A CQA/CQC plan shall be submitted for department review as part of the final cover design. The plan shall identify a licensed New Mexico professional engineer as the designated CQA officer and include his or her supervision of the CQA plan and shall identify the methods proposed to ensure that the closure construction will be completed in accordance with the design and specifications. Following the completion of the work, the CQA officer shall prepare a final CQA report. The final CQA report shall provide a detailed description of the installation methods and procedures and document that the work was conducted as designed.

**G. Process solution reduction plans.** The closure plan shall include a process solution reduction plan for the copper mine facility. The process solution reduction plan shall be a conceptual engineering document that describes the processes and methods that are expected to be used at a copper mine facility to reduce the quantities of process water in storage and circulation inventory at the end of copper production in preparation for long-term water management or treatment. The plan shall describe and list the current or proposed process water management units and inventories of process water. The plan shall describe the modifications to the process water management system required to create an efficient process water reduction system and the operation and maintenance requirements for the system with material take-offs of sufficient detail to prepare an engineering-level cost estimate equivalent to the cost estimate to be provided with the closure plan. The plan shall provide an estimate of the required water reduction period based on the water reduction

calculations provided in the plan to be used for planning and operation and maintenance cost calculations.

**H. Closure water management and water treatment plan.** The applicant or permittee shall submit a closure water management and water treatment plan. The closure water management and water treatment plan shall consist of a conceptual engineering document that describes the processes and methods that are expected to be used at a copper mine facility for long-term management or treatment of process water. The plan shall include an analysis of the expected operational life of each long-term water management or water treatment system, including interceptor systems, until each system is no longer needed to protect ground water quality and applicable standards are met. The plan shall describe the long-term water management and water treatment systems with sufficient detail, including locations of key components, expected operational life, material take-offs, and capital, operational and maintenance costs to prepare an engineering-level cost estimate. The plans shall provide sufficient detail to estimate capital and operating costs to provide the basis for financial assurance for these activities.

**I. Impoundments.** The permittee shall close all reservoirs and impoundments in a manner that ensures that the requirements of the Water Quality Act, commission rules and the discharge permit are met. Closure activities shall meet the following requirements:

(1) Fluids from reservoirs and impoundments shall be drained and appropriately disposed of.

(2) Sediments in the reservoir or impoundment shall be characterized and abated or appropriately disposed of in a manner that will not cause an exceedance of applicable standards.

(3) Materials underlying the reservoir or impoundment shall be characterized to determine if releases of water contaminants have occurred.

(4) Where characterization results show materials remaining within or beneath any reservoir or other impoundment that are not naturally occurring to be a source or potential source of ground water contamination outside the open pit surface drainage area, the reservoir or impoundment, shall be covered and re-vegetated pursuant to this section.

(5) Based on the characterization conducted pursuant to Paragraph (4) of this subsection, further characterization of ground water beneath and adjacent to the reservoir or impoundment may be required to determine if abatement is necessary.

(6) Reservoirs and impoundments located outside the open pit surface drainage

area shall be closed in a manner that creates positive drainage away from the impoundments, unless needed during closure and post closure for storm water retention or seepage interception, post-closure water management and treatment, or unless otherwise approved by the department. Post-closure reservoirs or impoundments to be used for the collection of non-impacted storm water and located over areas where residual wastes, vadose zone contamination or ground water contamination remains shall be synthetically lined pursuant to the design and construction criteria of Paragraph (4) of Subsection D of 20.6.7.17 NMAC.

(7) The department may approve alternative plans for closure of impoundments based on site-specific conditions when the alternative closure method will provide the same level of ground water protection as the methods specified in Paragraphs (1) through (6) of this subsection.

**J. Pipelines, tanks and sumps.** The permittee shall remove and properly dispose of the tailing, process water, or other materials contained in pipelines, tanks or sumps as soon as they are no longer needed for site operations, water treatment, or other post-closure water management. Any residual tailing, process water, sediments or contaminated water shall be removed from the pipelines, tanks or sumps prior to closure and dispose of the material in a department approved manner. Pipelines may be removed for appropriate disposal or cleaned and buried in place. Sumps may be removed for disposal or cleaned and broken up and buried in place. During pipeline, tank or sump closure, the permittee shall inspect the entire pipeline, tank or sump area for evidence of past spills and characterize the impacts and potential impacts of such spills. The permittee shall document all areas where there is evidence of spills and propose to the department appropriate corrective actions pursuant to 20.6.2.1203 NMAC. Following pipeline, tank or sump removal, the permittee shall remove for disposal or reclaim in place all acid generating pipeline, tank or sump bedding material that has the potential to impact water quality in excess of the applicable standards.

**K. Crushing, milling, concentrating and smelting.** The permittee shall close all crushing, milling, concentrating or smelting areas in a manner that ensures that the requirements of the Water Quality Act, commission rules and the discharge permit are met. Any remaining materials containing water contaminants that may cause an exceedance of the applicable standards shall be removed or disposed of in a department approved manner or covered pursuant to this section. The permittee shall characterize the crushing, milling, concentrating or smelting area for the presence of any remaining potential water



contaminants. If water contaminants are present that may with reasonable probability move directly or indirectly into ground water and cause an exceedance of the applicable standards, the area shall be covered pursuant to this section.

**L. Closure monitoring and maintenance.** During closure the permittee shall continue monitoring pursuant to 20.6.7.28 and 20.6.7.29 NMAC. The permittee may propose and the department may approve modifications to the required monitoring to reflect changes in conditions during closure, including abandonment of monitoring wells.

**M. Exceptions to design criteria.** The closure design criteria of this section may be modified if approved by the department. Design criteria required by the office of the state engineer dam safety bureau for regulated units, such as jurisdictional impoundments (including tailing impoundments), shall supersede the criteria in this section.

[20.6.7.33 NMAC - N, 12/1/13]

#### **20.6.7.34 IMPLEMENTATION OF CLOSURE:**

**A. Notification of intent to close.** A permittee shall notify the department in writing of its intent to implement the closure plan for a copper mine facility or an individual unit of a copper mine facility. Notification shall be given at least 30 days prior to implementation of closure construction activities.

**B. Initiation of closure.** Upon notice of intent to implement a closure plan, a permittee shall commence closure in accordance with the approved closure plan. Implementation of closure includes preparation and submittal of a final design and CQA/CQC plan. The permittee shall submit the final design and CQA/CQC plan to the department for approval within 180 days of submission of a notice of intent to implement the closure plan. The permittee shall commence final closure construction of the copper mine facility or unit within 180 days of receipt of written approval of the final design and CQA/CQC plan. These timelines may be modified by the department upon request by the permittee for good cause shown, including allowance for time for procurement and mobilization of construction services and materials prior to actual closure construction.

**C. Notification of change in operational status.** Whenever operation of a copper mine facility subject to closure requirements under the copper mine rule is suspended or resumed, the permittee shall provide the department written notification within 30 days of the date operation is suspended or resumed. Each subsequent semi-annual report submitted during suspension of operation of a copper mine

facility shall state whether the permittee intends to resume operations and the anticipated date of resumption of operations or the conditions under which operations will resume.

**D. Department notice regarding suspended operations and enforcement action.** If leaching operations or milling operations at a copper mine facility are suspended for more than one year, the department may issue a written notice to the permittee requesting that the permittee provide evidence that the permittee is capable of and intends to resume operation of the unit. If the permittee does not respond within 30 days of postal notice of the department's written notice, or if the permittee does not provide evidence that the copper mine facility or unit is capable of resuming operation, that the permittee intends to resume operation of the copper mine facility or unit, and that the copper mine facility or unit does not pose a threat to public health or cause undue damage to property, the department may determine that the permittee is in violation of the copper mine rule for failure to implement closure of the copper mine facility or unit in a timely manner and may take appropriate enforcement action pursuant to Section 74-6-10 NMSA 1978, including requiring implementation of closure in accordance with 20.6.7.33 NMAC and this section.

**E. Deferral of closure.** A permittee may request deferral of closure of a unit at a copper mine facility that has reached the end of its useful life with no intent by the permittee to resume operations if the proximity of active operations at the copper mine facility could result in ongoing contamination of the unit, closure would require relocation or replacement of infrastructure that supports ongoing operations, or for other good cause shown. The department may approve a deferral of closure if the permittee demonstrates that adequate water management measures are being implemented and maintained to protect ground water quality during the period of deferral.

**F. Final design.** The permittee shall submit a final design and CQA/CQC plan to the department for approval at least 60 days prior to construction, including commencement of surface shaping activities, of any area subject to a closure plan pursuant to the copper mine rule including, but not limited to, tailing impoundments, waste rock piles, leach stockpiles, and any other area where cover is required under the approved closure plan. The CQA/CQC plan must include detailed engineering designs for storm water management structures and associated conveyance systems, cover design specifications, a cover material suitability assessment, a borrow source location, a rip rap suitability assessment, a rip rap

source location, a post reclamation storm water management plan, and a schedule for completion. In addition, the final design and CQA/CQC plan shall include best management practices that will be employed during reclamation to address erosion and storm water management in a manner that meets the requirements of the Water Quality Act and commission regulations. The final design and CQA/CQC plan shall bear the signature and seal of a licensed professional engineer in accordance with Subsection A of 20.6.7.17 NMAC.

**G. CQA/CQC report.** Within 180 days after project completion, the permittee shall submit a final CQA/CQC report to the department. The CQA/CQC report shall include, at a minimum, as-built drawings of the entire reclaimed area including test pit locations and cover thickness data, a final survey report and topographic map following cover placement, a summary of work conducted, construction photographs, the location of reclaimed borrow areas, soil testing results, and laboratory analytical reports. The contour intervals on topographic maps shall be no greater than two feet for the top surfaces and no greater than 10 feet for the outslopes for closure of tailing impoundments, leach stockpiles or waste rock stockpiles. The CQA/CQC report shall provide summaries of the quality assurance data, documenting that the project was completed according to the approved final design and CQA/CQC plan with significant exceptions explained. The CQA/CQC report shall bear the signature and seal of a licensed professional engineer in accordance with Subsection A of 20.6.7.17 NMAC.

[20.6.7.34 NMAC - N, 12/1/13]

#### **20.6.7.35 POST-CLOSURE REQUIREMENTS:**

For each unit closed at a copper mine facility, the closure period shall cease, and the post-closure period shall commence, following the permittee's submission and department approval of a final CQA/CQC report that includes as-built drawings and a closure report documenting completion of regrading, covering, seeding, and construction of any other elements required for closure of a unit. The post-closure period for a copper mine facility or unit shall begin when the final CQA report is approved and only monitoring, inspections, maintenance, or operation of a closure water treatment and management plan remain to be conducted. During the post-closure period, a permittee shall conduct post-closure monitoring, inspection, reporting, maintenance, and implementation of contingency actions as specified by this section. The post-closure period shall end for a unit of a copper mine facility upon the completion of post-closure monitoring, inspection and maintenance for the unit as

required by this section. The post-closure period shall cease when all monitoring, inspections, maintenance, and operation of the water management and treatment plan required under this section may cease. For units of a copper mine facility subject to an abatement plan, monitoring, inspection, reporting, and operation of abatement systems shall be conducted in accordance with the approved abatement plan rather than this section.

**A. Interceptor system inspections.** A permittee shall perform quarterly inspections and annual evaluations of all interceptor systems and perform maintenance as necessary to ensure that the systems are performing as designed and are functioning in a manner that is protective of ground water quality. The inspection results and any maintenance performed by the permittee on interception systems shall be reported pursuant to Subsection D of this section.

**B. Water quality monitoring and reporting.** A permittee shall perform water quality monitoring and reporting during the post-closure period pursuant to 20.6.7.28 and 20.6.7.29 NMAC, as applicable and modified by this section. Ground water elevation contour maps required pursuant to Subsection L of 20.6.27 NMAC shall be submitted annually during the post-closure period. A permittee may request to reduce the frequency of or cease sampling a water quality monitoring location if the water contaminants in a monitoring well have been below the applicable standards for eight consecutive quarters, provided an adequate monitoring well network remains. If sampling of a monitoring well ceases in accordance with this subsection, the monitoring well shall be abandoned in accordance with applicable requirements unless the permittee requests and the department approves the monitoring well to remain in place for an alternative use or future monitoring.

**C. Reclamation monitoring, maintenance, and inspections.**

(1) **Vegetation.** To ensure that vegetated covers required by the copper mine rule or the approved discharge permit are protective of water quality, a permittee shall perform post-closure monitoring of vegetation pursuant to schedules and monitoring requirements approved by the mining and minerals division. Any proposed changes to the closure or post-closure vegetation monitoring plan to meet Mining Act requirements shall be submitted to the department to ensure monitoring is protective of water quality. The permittee shall provide the department with a copy of monitoring results for vegetated covers, including photographic documentation as required by the mining and minerals division. At such time as the mining and minerals

division vegetation success requirements under the Mining Act have been met, the permittee shall provide a final report to the department and vegetation monitoring may cease.

(2) **Erosion, subsidence, slope instability, ponding, and other features.** The permittee shall visually inspect closed discharge permit areas where a cover was installed for signs of excessive erosion, subsidence features, slope instability, ponding, development of fissures, or any other feature that may compromise the functional integrity of the cover system or drainage channels. Drainage channels, diversion structures, retention ponds, and auxiliary erosion control features shall be inspected in accordance with professionally recognized standards (e.g., U.S. department of agriculture natural resources conservation service standards). The inspections shall be conducted monthly for the first year following submission of the final CQA/CQC report for the unit, and quarterly thereafter until the end of post-closure monitoring, provided the department may approve a schedule allowing less-frequent monitoring. Discharge permit areas where covers were installed shall also be inspected for evidence of excessive erosion within 24 hours, or the next business day, following storm events of one inch or greater as measured at the nearest rain gauge on the copper mine facility. The permittee shall report and take corrective action pursuant to 20.6.2.7.30 NMAC regarding signs of excessive erosion, subsidence features, slope instability, ponding, development of fissures, or any other feature that may compromise the functional integrity of the cover system or drainage channels. Monitoring and inspection results shall be reported as required by Subsection D of this section.

(3) **Entry.** A permittee shall inspect and maintain the fencing or other management systems required by the discharge permit to prevent access by wildlife and unauthorized members of the public to an open pit, reservoir, impoundment or any sump that contains water that may present a hazard to public health or wildlife.

(4) **Cover maintenance.** A permittee shall perform maintenance on all areas where a cover system was installed as required by the copper mine rule, including associated drainage channels and diversion structures if their performance may affect cover system function. Based on monitoring of vegetation and erosion required by Paragraphs (1) and (2) of this subsection, a permittee shall provide recommendations for maintenance work in semiannual monitoring reports described in Subsection D of this section, including a schedule for completion of work.

(5) **Other inspection and maintenance.** A permittee shall routinely

inspect and maintain all structures, units, and equipment the failure of which may impact ground water quality. Water collected that exceeds the ground water quality standards in Section 20.6.2.3103 NMAC shall be stored, conveyed, treated and discharged in a manner that is consistent with the closure water treatment and management plan any other applicable regulatory requirements. The inspection results shall be reported as required in Subsection D of this section. Inspections and maintenance shall include but are not limited to:

- (a) storm water retention reservoir(s);
- (b) water treatment plant(s);
- (c) pumps and pipelines to deliver water to water treatment plant(s); and
- (d) seepage collection ponds.

(6) **Implementation of water management and treatment plan.** The permittee shall continue to implement the water management and treatment plan required by Subsection H of 20.6.7.33 NMAC during the post-closure period. The water management and treatment plan may be modified in accordance with its terms or by approval of the department to reflect changes in site conditions.

**D. Reporting.** A permittee shall submit to department semi-annual reports pursuant to the schedule in Subsection A of 20.6.7.29 NMAC until the post-closure period ends for the copper mine facility. The reports shall contain:

- (1) a description and the results of all post-closure monitoring conducted pursuant to this section;
- (2) a description of any work completed during the preceding semi-annual period including but not limited to:
  - (a) the status of post-closure activities for the copper mine facility; and
  - (b) any maintenance and repair work conducted for any closure unit; and
- (3) semi-annual potentiometric maps including data from all monitoring wells, extraction wells, piezometers, seeps and springs appropriate to the water table being mapped.

**E.** The contingency requirements of 20.6.7.30 NMAC apply to any deficiencies in the implemented closure systems discovered during the post-closure monitoring and inspections required pursuant to this section.

[20.6.7.35 NMAC - N, 12/1/13]

**20.6.7.36 [RESERVED]**

**20.6.7.37 R E C O R D RETENTION REQUIREMENTS FOR ALL COPPER MINE FACILITIES:**

**A.** A permittee shall retain a written record at the copper mine facility of all data and information related to field measurements, sampling, and analysis

conducted pursuant to the copper mine rule and the discharge permit. The following information shall be recorded and shall be made available to the department upon request.

(1) The dates, exact location and times of sampling or field measurements.

(2) The name and title of the individuals who performed each sample collection or field measurement.

(3) The date of the analysis of each sample.

(4) The name and address of the laboratory and the name and title of the person that performed the analysis of each sample.

(5) The analytical technique or method used to analyze each sample or take each field measurement.

(6) The results of each analysis or field measurement, including raw data.

(7) The results of any split, spiked, duplicate or repeat sample.

(8) A description of the quality assurance and quality control procedures used.

**B.** A permittee shall retain a written record at the copper mine facility of any spills, seeps, or leaks of effluent, and of leachate or process fluids not authorized by the discharge permit. Records shall be made available to the department upon request.

**C.** A permittee shall retain a written record at the copper mine facility of the operation, maintenance, and repair of all features/equipment used as required by the copper mine rule or the approved discharge permit to treat, store or dispose of process water, tailings, and impacted stormwater, measure flow rates, monitor water quality, or collect other data. Records shall include repair, replacement or calibration of any monitoring equipment and repair or replacement of any equipment used in the process water, tailings or impacted stormwater discharge system required by the copper mine rule or the approved discharge permit. Records shall be made available to the department upon request.

**D.** A permittee shall retain records of all monitoring information at the copper mine facility required by the copper mine rule, including all sampling results and other monitoring, calibration and maintenance records, copies of all reports, and the application for the discharge permit. Records shall be retained for a period of at least ten years from the date of the sample collection, measurement, report or application.

[20.6.7.37 NMAC - N, 12/1/13]

#### **20.6.7.38 TRANSFER OF COPPER MINE DISCHARGE PERMITS:**

**A.** Transfer of discharge permits for copper mine facilities shall be

made pursuant to 20.6.2.3111 NMAC and this section.

**B.** The transferor(s) shall notify the department, in writing, of the date of transfer of ownership, control or possession and provide contact information for the transferee(s) pursuant to Subsection B of 20.6.7.11 NMAC and Subsection B of 20.6.7.12 NMAC. Notification shall be submitted to the department of the transfer within 30 days of the ownership transfer. [20.6.7.38 NMAC - N, 12/1/13]

#### **20.6.7.39 CONTINUING EFFECT OF PRIOR ACTIONS DURING TRANSITION:**

**A.** A discharge permit issued pursuant to 20.6.2.3109 NMAC that has not expired on or before the effective date of the copper mine rule shall remain in effect and enforceable pursuant to the conditions of the discharge permit and for its term as designated by the permit. If an effective discharge permit contains a permit condition with a time period for submittal of a renewal application that is different from the time period contained in Subsection C of 20.6.7.10 NMAC that condition will remain in effect for two years following the effective date of the copper mine rule.

**B.** An application for a new discharge permit or an application for a renewed or modified discharge permit for an existing copper mine facility submitted to the department before the effective date of the copper mine rule and for which a draft permit has not been provided to the applicant shall be processed by the department pursuant to the copper mine rule. The applicant shall submit applicable permit fees to the department pursuant to 20.6.7.9 NMAC within 90 days of the effective date of the copper mine rule.

**C.** An application for a new discharge permit or an application for a renewed or modified discharge permit for an existing copper mine facility submitted to the department before the effective date of the copper mine rule and for which a draft permit has been provided to the applicant shall be processed by the department pursuant to 20.6.2.3000 through 20.6.2.3113 NMAC. The applicant shall submit applicable permit fees to the department pursuant to 20.6.7.9 NMAC within 90 days of the effective date of the copper mine rule.

**D.** If a discharge permit for a copper mine facility is expired on the effective date of the copper mine rule and an application for renewal has not been received by the department, the permittee or owner of the copper mine facility:

(1) shall within 90 days of the effective date of the copper mine rule submit to the department an application for a discharge permit renewal, renewal and modification or closure pursuant to 20.6.7.10

NMAC and applicable permit fees pursuant to 20.6.7.9 NMAC; or

(2) if the copper mine facility has not been constructed or operated, the permittee or the owner of record of the copper mine facility may submit a statement to the department instead of an application for renewal certifying that the copper mine facility has not been constructed or operated and that no discharges have occurred. Upon the department's verification of the certification, the department shall retire the discharge permit number from use.

**E.** The permittee or owner of record of any copper mine facility discharging, capable of recommencing discharging, or that has ceased discharging within the term of its most recent discharge permit shall continue all monitoring and submittal of monitoring reports as prescribed in the most recent discharge permit until the department issues a renewed or renewed and modified discharge permit.

[20.6.7.39 NMAC - N, 12/1/13]

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### **End of Adopted Rules Section**

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**Other Material Related to Administrative Law**

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**NEW MEXICO BOARD  
OF EXAMINERS FOR  
ARCHITECTS**

New Mexico Board of Examiners for  
Architects

P.O. Box 509  
Santa Fe, New Mexico  
505-982-2869

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, November 8, 2013. The meeting will be held in the Conference Room of the Board Office, #5 Calle Medico Ste C. in Santa Fe, beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

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**End of Other Related Material  
Section**

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## Submittal Deadlines and Publication Dates 2013

Volume XXIV	Submittal Deadline	Publication Date
Issue Number 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

## Submittal Deadlines and Publication Dates 2014

Volume XXV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 13
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 18	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

The *New Mexico Register* is the official publication for all notices of rule making, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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