

# New Mexico Register

The official publication for all official notices of rulemaking  
and filing of proposed, adopted and emergency rules.

**Volume XXVIII - Issue 2 - January 31, 2017**



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# New Mexico Register

Volume XXVIII, Issue 2

January 31, 2017

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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.

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## **Notices of Rulemaking and Proposed Rules**

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## Adopted Rules

### Effective Date and Validity of Rule Filings

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

### CHILDREN, YOUTH AND FAMILIES DEPARTMENT

**This is an amendment to 8.15.2 NMAC Section 7, effective February 1, 2017.**

#### 8.15.2.7 DEFINITIONS:

A. "Attending a job training or educational program" means actively participating in a job training or educational program.

B. "At-risk child care" means a program for families at-risk of child protective services involvement as determined by the department.

C. "CACFP" means the child and adult care food program, administered by the children, youth and families department.

D. "Child with a disability or special needs" means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.

E. "Child support enforcement division" means the child support enforcement program administered by New Mexico's human services department, which collects child support from non-custodial parents.

F. "Closure" means the child care case is closed.

G. "Co-payment" means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department's payment to the provider is reduced by the co-payment amount.

H. "Department"

means the New Mexico children, youth and families department (CYFD).

I. "Earned income" means income received as wages from employment or as profit from self-employment.

J. "Homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(1) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this Subsection.

K. "Incidental money" means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

L. "Infant, toddler, preschool, school age" means the age categories used for assigning child care provider reimbursement rates,

defined as follows:

(1) infant: zero - 23 months;

(2) toddler: 24 -35 months;

(3) preschool: three to five year olds; and

(4) school age: six year olds and older.

M. "Job training and educational program" means participation in a short or long term educational or training program which provides specific job skills which allow the participant to enter the workforce and directly relates to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post-secondary institutions.

N. "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. ~~[To determine approval of national accrediting bodies, the following standards are used: for center-based programs, CYFD uses the 2007 national association for the education of young children (NAEYC) program standards and accreditation criteria as well as NAEYC's 2007 accreditation process criteria; for family child care, CYFD uses the CYFD family child care accreditation standards; for before and after school care, CYFD uses the CYFD before and after school accreditation standards.]~~ CYFD determines the program criteria and standards to evaluate and approve accrediting bodies.

(1) The following are the only national



accrediting bodies that are approved by CYFD:

- (a) the association of Christian schools international (ACSI);
- (b) the council on accreditation (COA) for early childhood education and after school programs;
- (c) the international Christian accrediting association (ICAA);
- (d) the national accreditation commission for early care and education programs (NAC);
- (e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation; [or]
- (f) the national association of family child care (NAFCC); or
- (g) the national early childhood program accreditation (NECPA).

(2) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

O. “Non-temporary change in activity” means the family has experienced a change in activity that does not meet the definition of a “temporary change in activity” as defined in Section CC below.

P. “Non-traditional hours of care” means care provided between the afterhours of 7:00 p.m. and 7:00 a.m. Monday through Friday or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

Q. “Open case” means a case that has not been closed as a result of a failure to recertify, or that has not been closed due to becoming otherwise ineligible for child care assistance benefits.

R. “Overpayment” means a payment of child care assistance benefits received by a client or provider for which they are ineligible based on incomplete or

inaccurate information provided by either the client or the provider, or agency error.

S. “Child Protective services (CPS) child care” means child care services for children placed in the custody of the child protective services of the department.

T. “Provider types” means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) “In-home” care means care provided in the child’s own home.

(2) “Registered home” means child care provided in the home of a provider who is registered with the department to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are exempt.

(3) “Licensed family child care home” means child care provided in the home of a provider who is licensed by the department to care for up to six children.

(4) “Licensed group child care home” means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.

(5) “Licensed center” means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) “Out-of-school time care” means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

U. “Recertification” means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

V. “Registration/ educational fee” means a fee charged

to private pay and families receiving child care assistance for materials and supplies.

W. “SNAP” means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

X. “Star level” means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

Y. “Suspension” means that the child care case remains eligible, but benefits are not paid to the provider.

Z. “TANF” means the temporary assistance to needy families program administered by the U.S. department of health and human services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

AA. “Teen parent” means a biological parent under the age of 20 who is attending high school, working towards a general equivalency diploma (GED) or attending any other job skills training or educational programs directly related to enhancing employment opportunities.

BB. “Termination” means the child care case will be closed due to cause.

CC. “Temporary change of activity” means one of the following events that does not exceed three months:

(1) limited absence from work for employed parents for periods of family leave (including parental leave) or sick leave;

(2) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(3) student holiday or break for a parent participating in training or education;



(4) reduction in work, training or education hours, as long as the parent is still working or attending training or education; and

(5) cessation of work or attendance at a training or education program less than 90 days.

DD. "Underpayment" means a payment made by the department for services provided which did not fully reimburse the client or provider.

EE. "Unearned income" means income in the form of benefits such as TANF, workmen's compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, and grants which does not meet the definition of earned income.

FF. "Waiting list" means a list of families who have applied for child care services during a period of lack of funding.

GG. "Working" means employment of any type, including self-employment. For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements. [8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC 10/1/16; A, 02/01/17]

## CHILDREN, YOUTH AND FAMILIES DEPARTMENT

**This is an amendment to 8.16.2 NMAC Section 7, effective February 1, 2017.**

### 8.16.2.7 DEFINITIONS:

A. "Abuse" means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

(1) physical contact that harms or is likely to harm a child;

(2) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child; and

(3) an unlawful act, a threat or menacing

conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

B. "Activity area" means space for children's activities where related equipment and materials are accessible to the children.

C. "Adult" means a person who has a chronological age of 18 years or older.

D. "AIM HIGH" is a voluntary quality child care improvement program that is no longer open to new registered or licensed child care programs. Recognition of AIM HIGH will terminate on December 31, 2017.

E. "Assessment of children's progress" means children's progress is assessed informally on a continuous basis using a series of brief anecdotal records (descriptions of the child's behavior or skills in given situations). Children's progress also can be assessed formally at least twice a year using a developmental checklist (checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

F. "Attended" means the physical presence of a staff member or educator supervising children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See Supervision, Subsection TTT of 8.16.2.7 NMAC).

G. "Capacity" means the maximum number of children a licensed child care facility can care for at any one time.

H. "Child" means a person who is under the chronological age of 18 years.

I. "Child care center" means a facility required to be licensed under these regulations that provides care, services, and supervision for less than 24-hours a day to children. A child care center is in a non-residential setting and meets the applicable state and local building and safety codes.

J. "Child with a disability or special needs" means

a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and support; or children without identified conditions, but requiring specialized services, supports, or monitoring.

K. "Class A deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible, which results in death or serious physical or psychological harm; or a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a child.

L. "Class B deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible; or a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any child.

M. "Class C deficiency" means a violation or group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any child if the violation is not corrected.

N. "Clean" means to physically remove all dirt and contamination.

O. "Conditions of operation" means a written plan that applies to a licensed facility and is developed by the licensing authority when the licensing authority determines that provisions within these regulations have been violated. The plan addresses corrective actions that the licensee must take within a specified timeframe in order to come into compliance with licensing requirements. During this timeframe the licensing authority may increase its level of monitoring.

P. "Core hours" means the daily hours of operation of the child care facility.

Q. "Corrective action plan" means the plan submitted by the licensee addressing how and



when identified deficiencies will be corrected.

R. "Curriculum" is what happens every day in the classroom and on the playground. It includes every aspect of the daily program. Curriculum derives from the program's mission statement, philosophy (which, in turn, is based on assumptions about young children's development and learning), and program goals and objectives. It includes how materials and equipment are used, activities that children and adults participate in, and interactions among children and between children and adults.

S. "Deficiency" means a violation of these regulations.

T. "Direct provider of care" means any individual who, as a result of employment or contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

U. "Director" means the person in charge of the day-to-day operation and program of a child care center.

V. "Disinfect" means to destroy or inactivate most germs on any inanimate object, but not bacterial spores. Mix four tablespoons of bleach with one gallon of cool water or use an environmental protection agency (EPA) registered disinfectant.

W. "Drop-in" means a child who attends a child care facility on an occasional or unscheduled basis.

X. "Educator" means an adult who directly cares for, serves, and supervises children in a licensed child care facility. Educators are considered staff members.

Y. "Environment" means that the environment meets all required local, state, and federal regulations. It includes space (both indoors and outdoors) with appropriate equipment and materials that encourage children to engage in hands-on learning.

Z. "Exploitation" of a child consists of the act or process, performed intentionally, knowingly,

or recklessly, of using a child's property for another person's profit, advantage or benefit without legal entitlement to do so.

AA. "Expulsion" means the involuntary termination of the enrollment of a child or family.

BB. "Facility" means any premises licensed under these regulations where children receive care, services, and supervision. A facility can be a center, home, program, or other site where children receive childcare.

CC. "Family child care home" means a private dwelling required to be licensed under these regulations that provides care, services and supervision for a period of less than 24 hours of any day for no more than six children. The licensee will reside in the home and be the primary educator.

DD. "FOCUS" is a voluntary tiered quality rating and improvement program that is open to all registered and licensed child care programs.

EE. "Group child care home" means a home required to be licensed pursuant to these regulations, which provides care, services, and supervision for at least seven but not more than 12 children. The licensee will reside in the home and be the primary educator.

FF. "Group size" is the number of children assigned to an educator or team of educators occupying an individual classroom or well-defined space within a larger room.

GG. "Guidance" means fostering a child's ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

HH. "Home" means a private residence and its premises licensed under these regulations where children receive care, services, and supervision. The licensee will reside in the home and be the primary educator.

II. "Homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(1) children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and  
(4) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this Subsection.

JJ. "Infant" means a child age six weeks to 12 months.

KK. "License" means a document issued by CYFD to a child care facility licensed and governed by these regulations and granting the legal right to operate for a specified period of time, not to exceed one year.

LL. "Licensee" means the person(s) who, or organization which, has ownership, leasehold, or similar interest in the child care facility and in whose name the license for the child care facility has been issued and who is legally responsible for compliance with these regulations.

MM. "Licensing authority" means the child care services bureau - licensing section of the early childhood services division of the New Mexico children, youth and families department which has been granted the responsibility for the administration and enforcement of these regulations by authority of Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16 NMSA 1978, as amended.



NN. "Mission statement," describes what the program aspires to do and whom the program aspires to serve.

OO. "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. ~~[To determine approval of national accrediting bodies, the following standards are used: for center based programs, CYFD uses the 2007 national association for the education of young children (NAEYC) program standards and accreditation criteria as well as NAEYC's 2007 accreditation process criteria; for family child care, CYFD uses the CYFD family child care accreditation standards; for before and after school care, CYFD uses the CYFD before and after school accreditation standards.]~~ CYFD determines the program criteria and standards to evaluate and approve accrediting bodies.

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- (c) the international Christian accrediting association (ICAA);
- (d) the national accreditation commission for early care and education programs (NAC);
- (e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation; ~~[or]~~
- (f) the national association of family child care (NAFCC); or
- (g) the national early childhood program accreditation (NECPA).

(2) Effective July 15, 2014 accrediting bodies that

have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

PP. "Night care" means the care, services and supervision provided by a licensed child care facility to children between the hours of 10:00 p.m. to 6:00 a.m.

QQ. "Neglect" means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

RR. "Notifiable diseases" means confirmed or suspected diseases/conditions as itemized by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

SS. "Orientation" means a process by which the employer informs each new employee, volunteer and substitute, in advance of assuming their duties, of the mission, philosophy, policies, and procedures of the program, including clear direction about performance expectations.

TT. "Out of school time program" means a school age program at a specific site, usually a school or community center, offering on a consistent basis a variety of developmentally appropriate activities that are both educational and recreational.

UU. "Parent handbook" is a written communication tool that provides valuable information to families of the children the program serves. It includes all matters of relevance to family members regarding the program and is updated annually, or as needed.

VV. "Pest" means any living organism declared a pest pursuant to the Pesticide Control Act.

WW. "Pesticide" means any chemical substance or mixture of substances intended for preventing,

destroying, repelling or mitigating any pest.

XX. "Philosophy statement" describes how the program's mission will be carried out. It reflects the values, beliefs, and convictions of the program about how young children learn and describes the components of the program that contribute to that learning. It provides the program's perspective on early care and education and the nature of how children learn. The program's philosophy is implemented through the curriculum.

YY. "Policy" is a written directive that guides decision-making. Policies form the basis for authoritative action.

ZZ. "Premises" means all parts of the buildings, grounds, and equipment of a child care facility licensed pursuant to these regulations.

AAA. "Procedure" is a series of steps to be followed, usually in a specific order, to implement policies.

BBB. "Professional development" is an on-going plan for continued professional development for each educator, including the director.

CCC. "Program administrator" means the person responsible for planning or implementing the care of children in the program. This includes but is not limited to making contact with parents, keeping appropriate records, observing and evaluating the child's development, supervising staff members and volunteers, and working cooperatively with the site director and other staff members toward achieving program goals and objectives. This definition applies to out of school time programs only.

DDD. "Punishment" means the touching of a child's body with the intent of inducing pain. This includes but is not limited to pinching, shaking, spanking, hair or ear pulling. It also includes any action which is intended to induce fear, shame or other emotional discomfort.

EEE. "Ratio" is the maximum number of children one educator can be responsible for.



FFF. "Requirements" means the criteria and regulations developed by children, youth and families department in 8.16.2 NMAC; to set minimum standards of care, education and safety for the protection and enhancement of the well-being of children receiving care, services or supervision.

GGG. "Restriction" means to control enrollment, service type, capacity, activities, or hours of operation.

HHH. "Revocation" means the act of making a license null and void through its cancellation.

III. "Sanction" means a measure imposed by the licensing authority for a violation(s) of these standards.

JJJ. "Sanitize" means to reduce germs on inanimate surfaces to levels considered safe by public health codes or regulations. Mix one and one half teaspoons of bleach with one gallon of cool water or use an EPA registered sanitizer.

KKK. "Serious injury" means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

LLL. "School-age" means a child in care who is age five to 18 years.

MMM. "Staff evaluation" means that each staff member is evaluated by the director, using criteria from the individual's job description. The individual being evaluated knows ahead of time the criteria and procedures (which may include self-evaluation) for which they are being evaluated. The director discusses evaluation results with each staff member, and results are considered when determining salary increments and are incorporated into the individual's professional development plan.

NNN. "Staff member" means any person, including educators, who are employed by the licensee and who are present at any time when children are present.

OOO. "Substitute" means an adult who directly cares for, serves, and supervises children in a licensed

child care facility, who works in place of the regular educator, and who works less than an average of 40 hours per month in a six month period.

PPP. "Suspension" means a temporary cancellation of a license pending an appeal hearing or correction of deficiencies.

QQQ. "Site director" means the person at the site having responsibility for program administration and supervision of an out of school time program. This definition applies to out of school time programs only.

RRR. "Star level" means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

SSS. "Substantiated complaint" means a complaint determined to be factual, based on an investigation of events.

TTT. "Supervision" means the direct observation and guidance of children at all times and requires being physically present with them. The only exception is school-age children who will have privacy in the use of bathrooms.

UUU. "Survey" means a representative of the licensing authority enters a child care facility, observes activity, examines the records and premises, interviews parents and staff members and records deficiencies.

VVV. "Toddler" means a child age 12 months to 24 months.

WWW. "U/L" means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

XXX. "Unattended" means an educator is not physically present with a child or children under care.

YYY. "Unsubstantiated complaint" means a complaint not determined to be factual based on an investigation of events.

ZZZ. "Variance" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for the

period of licensure. The granting of variances is at the sole discretion of the licensing authority.

AAAA. "Volunteer" means any person who is not employed by the child care facility, spends six hours or less per week at the facility, is under direct physical supervision and is not counted in the facility ratio. Anyone not fitting this description must meet all requirements for staff members or educator.

BBBB. "Waiver" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority. [8.16.2.7 NMAC - Rp, 8.16.2.7 NMAC, 10/1/16; A, 02/01/17]

## WATER QUALITY CONTROL COMMISSION

**This is an amendment to 20.6.4 NMAC, Sections 7, 10, 12, 16, 97-99, 101, 102, 110, 116, 124, 206, 305, 317, 403, 404, 502, 503, 803, 804, 900 and 901; and adding Sections 807-809, effective 03/02/2017.**

**20.6.4.7 DEFINITIONS:**  
Terms defined in the New Mexico Water Quality Act, but not defined in this part will have the meaning given in the Water Quality Act.

**A. Terms beginning with numerals or the letter "A," and abbreviations for units:**

(1) "4T3 temperature" means the temperature not to be exceeded for four or more consecutive hours in a 24-hour period on more than three consecutive days.

(2) "6T3 temperature" means the temperature not to be exceeded for six or more consecutive hours in a 24-hour period on more than three consecutive days.

(3)  
**Abbreviations** used to indicate units are defined as follows:

(a)  
**"cfu/100 mL"** means colony-forming units per 100 milliliters; the results for *E. coli* may be reported as either



colony forming units (CFU) or the most probable number (MPN), depending on the analytical method used:

(b)

“cfs” means cubic feet per second;

(c)

“µg/L” means micrograms per liter, equivalent to parts per billion when the specific gravity of the solution equals 1.0;

(d)

“µS/cm” means microsiemens per centimeter; one µS/cm is equal to one µmho/cm;

(e)

“mg/kg” means milligrams per kilogram, equivalent to parts per million;

(f)

“mg/L” means milligrams per liter, equivalent to parts per million when the specific gravity of the solution equals 1.0;

(g)

“MPN/100 mL” means most probable number per 100 milliliters; the results for *E. coli* may be reported as either CFU or MPN, depending on the analytical method used:

(g) (h)

“NTU” means nephelometric turbidity unit;

(h) (i)

“pCi/L” means picocuries per liter;

(j)

“pH” means the measure of the acidity or alkalinity and is expressed in standard units (su).

(4) “Acute

toxicity” means toxicity involving a stimulus severe enough to induce a response in 96 hours of exposure or less. Acute toxicity is not always measured in terms of lethality, but may include other toxic effects that occur within a short time period.

(5)

“Adjusted gross alpha” means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample, including radium-226, but excluding radon-222 and uranium. Also excluded are source, special nuclear and by-product material as defined by the Atomic Energy Act of 1954.

(6) “Aquatic

life” means any plant or animal life that uses surface water as primary habitat for at least a portion of its life cycle, but does not include avian or mammalian species.

(7)

“Attainable” means achievable by the imposition of effluent limits required under sections 301(b) and 306 of the Clean Water Act and implementation of cost-effective and reasonable best management practices for nonpoint source control.

B. Terms beginning

with the letter “B”:

(1) “Best

management practices” or “BMPs”:

(a)

for national pollutant discharge elimination system (NPDES) permitting purposes means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of “waters of the United States;” BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage; or

(b)

for nonpoint source pollution control purposes means methods, measures or practices selected by an agency to meet its nonpoint source control needs; BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures; BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters; BMPs for nonpoint source pollution control purposes shall not be mandatory except as required by state or federal law.

(2)

“Bioaccumulation” refers to the uptake and retention of a substance by an organism from its surrounding medium and food.

(3)

“Bioaccumulation factor” is the ratio of a substance’s concentration in tissue versus its concentration in

ambient water, in situations where the organism and the food chain are exposed.

(4)

“Biomonitoring” means the use of living organisms to test the suitability of effluents for discharge into receiving waters or to test the quality of surface waters of the state.

C. Terms beginning with the letter “C”:

(1) “CAS

number” means an assigned number by chemical abstract service (CAS) to identify a substance. CAS numbers index information published in chemical abstracts by the American chemical society.

(2) “Chronic

toxicity” means toxicity involving a stimulus that lingers or continues for a relatively long period relative to the life span of an organism. Chronic effects include, but are not limited to, lethality, growth impairment, behavioral modifications, disease and reduced reproduction.

(3)

“Classified water of the state”

means a surface water of the state, or reach of a surface water of the state, for which the commission has adopted a segment description and has designated a use or uses and applicable water quality criteria in 20.6.4.101 through 20.6.4.899 NMAC.

(4) “Closed

basin” is a basin where topography prevents the surface outflow of water and water escapes by evapotranspiration or percolation.

(4) (5)

“Coldwater” in reference to an aquatic life use means a surface water of the state where the water temperature and other characteristics are suitable for the support or propagation or both of coldwater aquatic life.

(5) (6)

“Coolwater” in reference to an aquatic life use means the water temperature and other characteristics are suitable for the support or propagation of aquatic life whose physiological tolerances are intermediate between and may



overlap those of warm and coldwater aquatic life.

(6) (7)

**“Commission”** means the New Mexico water quality control commission.

(7) (8) **“Criteria”**

are elements of state water quality standards, expressed as constituent concentrations, levels or narrative statements, representing a quality of water that supports a use. When criteria are met, water quality will protect the designated use.

**D. Terms beginning with the letter “D”:**

(1) **“DDT and derivatives”** means 4,4’-DDT (CAS number 50293), 4,4’-DDE (CAS number 72559) and 4,4’-DDD (CAS number 72548).

(2)

**“Department”** means the New Mexico environment department.

(3)

**“Designated use”** means a use specified in 20.6.4.97 through 20.6.4.899 NMAC for a surface water of the state whether or not it is being attained.

(4)

**“Dissolved”** refers to the fraction of a constituent of a water sample that passes through a 0.45-micrometer pore-size filter. The “dissolved” fraction is also termed “filterable residue.”

(5) **“Domestic water supply”** means a surface water of the state that could be used for drinking or culinary purposes after disinfection.

**E. Terms beginning with the letter “E”:**

(1) **“E. coli”** means the bacteria *Escherichia coli*.

(2)

**“Ephemeral”** when used to describe a surface water of the state means the water body contains water briefly only in direct response to precipitation; its bed is always above the water table of the adjacent region.

(3) **“Existing use”** means a use actually attained in a surface water of the state on or after November 28, 1975, whether or not it is a designated use.

**F. Terms beginning with the letter “F”:**

(1) **“Fish culture”** means production of coldwater or warmwater fishes in a hatchery or rearing station.

(2) **“Fish early life stages”** means the egg and larval stages of development of fish ending when the fish has its full complement of fin rays and loses larval characteristics.

**G. Terms beginning with the letter “G”: [RESERVED]**

**H. Terms beginning with the letter “H”:**

(1) **“High quality coldwater”** in reference to an aquatic life use means a perennial surface water of the state in a minimally disturbed condition with considerable aesthetic value and superior coldwater aquatic life habitat. A surface water of the state to be so categorized must have water quality, stream bed characteristics and other attributes of habitat sufficient to protect and maintain a propagating coldwater aquatic life population.

(2) **“Human health-organism only”** means the health of humans who ingest fish or other aquatic organisms from waters that contain pollutants.

**I. Terms beginning with the letter “I”:**

(1) **“Industrial water supply”** means the use or storage of water by a facility for process operations unless the water is supplied by a public water system. Industrial water supply does not include irrigation or other agricultural uses.

(2) **“Intermittent”** when used to describe a surface water of the state means the water body contains water for extended periods only at certain times of the year, such as when it receives seasonal flow from springs or melting snow.

(3) **“Interstate waters”** means all surface waters of the state that cross or form a part of the border between states.

(4)

**“Intrastate waters”** means all surface waters of the state that are not interstate waters.

(5) **“Irrigation”** means application of water to land areas to supply the water needs of beneficial plants.

(6) **“Irrigation storage”** means storage of water to supply the needs of beneficial plants.

**J. Terms beginning with the letter “J”: [RESERVED]**

**K. Terms beginning with the letter “K”: [RESERVED]**

**L. Terms beginning with the letter “L”:**

(1) **“LC-50”** means the concentration of a substance that is lethal to 50 percent of the test organisms within a defined time period. The length of the time period, which may vary from 24 hours to one week or more, depends on the test method selected to yield the information desired.

(2) **“Limited aquatic life”** as a designated use, means the surface water is capable of supporting only a limited community of aquatic life. This subcategory includes surface waters that support aquatic species selectively adapted to take advantage of naturally occurring rapid environmental changes, ephemeral or intermittent water, high turbidity, fluctuating temperature, low dissolved oxygen content or unique chemical characteristics.

(3) **“Livestock watering”** means the use of a surface water of the state as a supply of water for consumption by livestock.

**M. Terms beginning with the letter “M”:**

(1) **“Marginal coldwater”** in reference to an aquatic life use means that natural intermittent or low flows, or other natural habitat conditions severely limit maintenance of a coldwater aquatic life population or historical data indicate that the temperature in the surface water of the state may exceed 25°C (77°F).

(2) **“Marginal warmwater”** in reference to an aquatic life use means natural intermittent or low flow or other



natural habitat conditions severely limit the ability of the surface water of the state to sustain a natural aquatic life population on a continuous annual basis; or historical data indicate that natural water temperature routinely exceeds 32.2°C (90°F).

(3)

**“Maximum temperature”** means the instantaneous temperature not to be exceeded at any time.

(4)

**“Minimum quantification level”** means the minimum quantification level for a constituent determined by official published documents of the United States environmental protection agency.

**N. Terms beginning with the letter “N”:**

(1) **“Natural**

**background”** means that portion of a pollutant load in a surface water resulting only from non-anthropogenic sources. Natural background does not include impacts resulting from historic or existing human activities.

(2) **“Natural**

**causes”** means those causal agents that would affect water quality and the effect is not caused by human activity but is due to naturally occurring conditions.

(3) **“Nonpoint**

**source”** means any source of pollutants not regulated as a point source that degrades the quality or adversely affects the biological, chemical or physical integrity of surface waters of the state.

**O. Terms beginning with the letter “O”:**

(1)

**“Organoleptic”** means the capability to produce a detectable sensory stimulus such as odor or taste.

(2)

**“Oversight agency”** means a state or federal agency, such as the United States department of agriculture forest service, that is responsible for land use or water quality management decisions affecting nonpoint source discharges where an outstanding national resource water is located.

**P. Terms beginning with the letter “P”:**

(1) **“Playa”**

means a shallow closed basin lake typically found in the high plains and deserts.

(2)

**“Perennial”** when used to describe a surface water of the state means the water body typically contains water throughout the year and rarely experiences dry periods.

(3) **“Point**

**source”** means any discernible, confined and discrete conveyance from which pollutants are or may be discharged into a surface water of the state, but does not include return flows from irrigated agriculture.

(4)

**“Practicable”** means that which may be done, practiced or accomplished; that which is performable, feasible, possible.

(5) **“Primary**

**contact”** means any recreational or other water use in which there is prolonged and intimate human contact with the water, such as swimming and water skiing, involving considerable risk of ingesting water in quantities sufficient to pose a significant health hazard. Primary contact also means any use of surface waters of the state for cultural, religious or ceremonial purposes in which there is intimate human contact with the water, including but not limited to ingestion or immersion, that could pose a significant health hazard.

(6) **“Public**

**water supply”** means the use or storage of water to supply a public water system as defined by New Mexico’s Drinking Water Regulations, 20.7.10 NMAC. Water provided by a public water system may need to undergo treatment to achieve drinking water quality.

**Q. Terms beginning with the letter “Q”: [RESERVED]**

**R. Terms beginning with the letter “R”: [RESERVED]**

**S. Terms beginning with the letter “S”:**

(1)

**“Secondary contact”** means any recreational or other water use in which human contact with the water may occur and in which the

probability of ingesting appreciable quantities of water is minimal, such as fishing, wading, commercial and recreational boating and any limited seasonal contact.

(2)

**“Segment”** means a classified water of the state described in 20.6.4.101 through 20.6.4.899 NMAC. The water within a segment should have the same uses, similar hydrologic characteristics or flow regimes, and natural physical, chemical and biological characteristics and exhibit similar reactions to external stresses, such as the discharge of pollutants.

(3) **“Specific**

**conductance”** is a measure of the ability of a water solution to conduct an electrical current.

(4) **“State”**

means the state of New Mexico.

(5) **“Surface**

**water(s) of the state”** means all surface waters situated wholly or partly within or bordering upon the state, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, reservoirs or natural ponds. Surface waters of the state also means all tributaries of such waters, including adjacent wetlands, any manmade bodies of water that were originally created in surface waters of the state or resulted in the impoundment of surface waters of the state, and any “waters of the United States” as defined under the Clean Water Act that are not included in the preceding description. Surface waters of the state does not include private waters that do not combine with other surface or subsurface water or any water under tribal regulatory jurisdiction pursuant to Section 518 of the Clean Water Act. Waste treatment systems, including treatment ponds or lagoons designed and actively used to meet requirements of the Clean Water Act (other than cooling ponds as defined in 40 CFR Part 423.11(m) that also meet the criteria of this definition), are not surface waters of the state, unless they were originally created in surface waters of the state or resulted in the impoundment of



surface waters of the state.

**T. Terms beginning with the letter “T”:**

**(1) “TDS”**

means total dissolved solids, also termed “total filterable residue.”

**(2) “Toxic**

**pollutant”** means those pollutants, or combination of pollutants, including disease-causing agents, that after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, shortened life spans, disease, adverse behavioral changes, reproductive or physiological impairment or physical deformations in such organisms or their offspring.

**(3)**

**“Tributary”** means a perennial, intermittent or ephemeral waterbody that flows into a larger waterbody, and includes a tributary of a tributary.

**(4)**

**“Turbidity”** is an expression of the optical property in water that causes incident light to be scattered or absorbed rather than transmitted in straight lines.

**U. Terms beginning with the letter “U”: [RESERVED]**

**V. Terms beginning with the letter “V”: [RESERVED]**

**W. Terms beginning with the letter “W”:**

**(1)**

**“Warmwater”** with reference to an aquatic life use means that water temperature and other characteristics are suitable for the support or propagation or both of warmwater aquatic life.

**(2) “Water**

**contaminant”** means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water. “Water contaminant” does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, but may include all other radioactive materials, including but not limited to radium and accelerator-produced isotopes.

**(3)**

**“Water pollutant”** means a water

contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property.

**(4)**

**“Wetlands”** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. Wetlands that are constructed outside of a surface water of the state for the purpose of providing wastewater treatment and that do not impound a surface water of the state are not included in this definition.

**(5) “Wildlife**

**habitat”** means a surface water of the state used by plants and animals not considered as pathogens, vectors for pathogens or intermediate hosts for pathogens for humans or domesticated livestock and plants.

**X. Terms beginning with the letters “X” through “Z”: [RESERVED]**

[20.6.4.7 NMAC - Rp, 20 NMAC 6.1.1007, 10-12-2000; A, 7-19-2001; A, 05-23-2005; A, 07-17-2005; A, 08-01-2007; A, 12-01-2010; A, 01-14-2011; A, 03/02/2017]

**20.6.4.10 REVIEW OF STANDARDS; NEED FOR ADDITIONAL STUDIES:**

**A.** Section 303(c)(1) of the federal Clean Water Act requires that the state hold public hearings at least once every three years for the purpose of reviewing water quality standards and proposing, as appropriate, necessary revisions to water quality standards.

**B.** It is recognized that, in some cases, numeric criteria have been adopted that reflect use designations rather than existing conditions of surface waters of the state. Narrative criteria are required for many constituents because accurate data on background levels are lacking. More intensive water quality monitoring may identify

surface waters of the state where existing quality is considerably better than the established criteria. When justified by sufficient data and information, the water quality criteria will be modified to protect the attainable uses.

**C.** It is also recognized that contributions of water contaminants by diffuse nonpoint sources of water pollution may make attainment of certain criteria difficult. Revision of these criteria may be necessary as new information is obtained on nonpoint sources and other problems unique to semi-arid regions.

**D. Site-specific criteria:**

**(1)** The

commission may adopt site-specific numeric criteria applicable to all or part of a surface water of the state based on relevant site-specific conditions such as:

**(a)**

actual species at a site are more or less sensitive than those used in the national criteria data set;

**(b)**

physical or chemical characteristics at a site such as pH or hardness alter the biological availability and/or toxicity of the chemical;

**(c)**

physical, biological or chemical factors alter the bioaccumulation potential of a chemical;

**(d)**

the concentration resulting from natural background exceeds numeric criteria for aquatic life, wildlife habitat or other uses if consistent with Subsection E of 20.6.4.10 NMAC; or

**(e)**

other factors or combination of factors that upon review of the commission may warrant modification of the default criteria, subject to EPA review and approval.

**(2)** Site-

specific criteria must fully protect the designated use to which they apply. In the case of human health-organism only criteria, site-specific criteria must fully protect human health when organisms are consumed from waters containing pollutants.



(3) Any person may petition the commission to adopt site-specific criteria. A petition for the adoption of site-specific criteria shall:

(a) identify the specific waters to which the site-specific criteria would apply;

(b) explain the rationale for proposing the site-specific criteria;

(c) describe the methods used to notify and solicit input from potential stakeholders and from the general public in the affected area, and present and respond to the public input received;

(d) present and justify the derivation of the proposed criteria.

(4) A derivation of site-specific criteria shall rely on a scientifically defensible method, such as one of the following:

(a) the recalculation procedure, the water-effect ratio for metals procedure or the resident species procedure as described in the water quality standards handbook (EPA-823-B-94-005a, 2nd edition, August 1994);

(b) the streamlined water-effect ratio procedure for discharges of copper (EPA-822-R-01-005, March 2001);

(c) the biotic ligand model as described in aquatic life ambient freshwater quality criteria - copper (EPA-822-R-07-001, February 2007);

(d) the methodology for deriving ambient water quality criteria for the protection of human health (EPA-822-B-00-004, October 2000) and associated technical support documents; or

(e) a determination of the natural background of the water body as described in Subsection E of 20.6.4.10 NMAC.

**E. Site-specific criteria based on natural background:** The commission may adopt site-specific criteria equal to the concentration resulting from natural background where that

concentration protects the designated use. The concentration resulting from natural background supports the level of aquatic life and wildlife habitat expected to occur naturally at the site absent any interference by humans. Domestic water supply, primary or secondary contact, or human health-organism only criteria shall not be modified based on natural background. A determination of natural background shall:

(1) consider natural spatial and seasonal to interannual variability as appropriate;

(2) document the presence of natural sources of the pollutant;

(3) document the absence of human sources of the pollutant or quantify the human contribution; and

(4) rely on analytical, statistical or modeling methodologies to quantify the natural background.

#### **F. Temporary standards:**

(1) Any person may petition the commission to adopt a temporary standard applicable to all or part of a surface water of the state as provided for in this section and applicable sections in 40 CFR Part 131, Water Quality Standards; specifically, Section 131.14. The commission may adopt a proposed temporary standard if the petitioner demonstrates that:

(a) attainment of the associated designated use may not be feasible in the short term due to one or more of the factors listed in 40 CFR 131.10(g), or due to the implementation of actions necessary to facilitate restoration such as through dam removal or other significant wetland or water body reconfiguration activities as demonstrated by the petition and supporting work plan requirements in Paragraphs (4) and (5) of Subsection F of 20.6.4.10 NMAC;

(b) the proposed temporary standard represents the highest degree of protection feasible in the short term.

limits the degradation of water quality to the minimum necessary to achieve the original standard by the expiration date of the temporary standard, and adoption will not cause the further impairment or loss of an existing use;

(c) for point sources, existing or proposed discharge control technologies will comply with applicable technology-based limitations and feasible technological controls and other management alternatives, such as a pollution prevention program; and

(d) for restoration activities, nonpoint source or other control technologies shall limit downstream impacts, and if applicable, existing or proposed discharge control technologies shall be in place consistent with Subparagraph (c) of Paragraph (1) of Subsection F of 20.6.4.10 NMAC.

(2) A temporary standard shall apply to specific designated use(s), pollutant(s), or permittee(s), and to specific water body segment(s). The adoption of a temporary standard does not exempt dischargers from complying with all other applicable water quality standards or control technologies.

(3) Designated use attainment as reported in the federal Clean Water Act, Section 305(b)/303(d) Integrated Report shall be based on the original standard and not on a temporary standard.

(4) A petition for a temporary standard shall:

(a) identify the currently applicable standard(s), the proposed temporary standard for the specific pollutant(s), the permittee(s), and the specific surface water body segment(s) of the state to which the temporary standard would apply;

(b) include the basis for any factor(s) specific to the applicability of the temporary standard (for example critical flow under Subsection B of 20.6.4.11 NMAC);

(c) demonstrate that the proposed temporary standard meets the



requirements in this subsection:

**(d)**

present a work plan with timetable of proposed actions for achieving compliance with the original standard in accordance with Paragraph (5) of Subsection F of 20.6.4.10 NMAC;

**(e)**

include any other information necessary to support the petition.

**(5)** As a

condition of a petition for a temporary standard, in addition to meeting the requirements in this Subsection, the petitioner shall prepare a work plan in accordance with Paragraph (4) of Subsection F of 20.6.4.10 NMAC and submit the work plan to the department for review and comment. The work plan shall identify the factor(s) listed in 40 CFR 131.10(g) or Subparagraph (a) of Paragraph (1) of Subsection F of 20.6.4.10 NMAC affecting attainment of the standard that will be analyzed and the timeline for proposed actions to be taken to achieve the uses attainable over the term of the temporary standard, including baseline water quality, and any investigations, projects, facility modifications, monitoring, or other measures necessary to achieve compliance with the original standard. The work plan shall include provisions for review of progress in accordance with Paragraph (8) of Subsection F of 20.6.4.10 NMAC, public notice and consultation with appropriate state, tribal, local and federal agencies.

**(6)** The

commission may condition the approval of a temporary standard by requiring additional monitoring, relevant analyses, the completion of specified projects, submittal of information, or any other actions.

**(7)** Temporary

standards may be implemented only after a public hearing before the commission, commission approval and adoption pursuant to Subsection F of 20.6.4.10 NMAC for all state purposes, and the federal Clean Water Act Section 303 (c) approval for any federal action.

**(8)** All

temporary standards are subject

to a required review during each succeeding review of water quality standards conducted in accordance with Subsection A of 20.6.4.10 NMAC. The petitioner shall provide a written report to the commission documenting the progress of proposed actions, pursuant to a reporting schedule stipulated in the approved temporary standard. The purpose of the review is to determine progress consistent with the original conditions of the petition for the duration of the temporary standard. If the petitioner cannot demonstrate that sufficient progress has been made the commission may revoke approval of the temporary standard or provide additional conditions to the approval of the temporary standard.

**(9)** The

commission may consider a petition to extend a temporary standard. The effective period of a temporary standard shall be extended only if demonstrated to the commission that the factors precluding attainment of the underlying standard still apply, that the petitioner is meeting the conditions required for approval of the temporary standard, and that reasonable progress towards meeting the underlying standard is being achieved.

**(10)** A

temporary standard shall expire no later than the date specified in the approval of the temporary standard. Upon expiration of a temporary standard, the original standard becomes applicable.

**(11)** Temporary

standards shall be identified in 20.6.4.97-899 NMAC as appropriate for the surface water affected.

**(12)**

“Temporary standard” means a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the temporary standard. [20.6.4.10 NMAC - Rp, 20 NMAC 6.1.1102, 10-12-2000; Rn, 20.6.4.9 NMAC, 05-23-2005; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

## **20.6.4.12 COMPLIANCE WITH WATER QUALITY STANDARDS:**

The following provisions apply to determining compliance for enforcement purposes; they do not apply for purposes of determining attainment of uses. The department has developed assessment protocols for the purpose of determining attainment of uses that are available for review from the department’s surface water quality bureau.

**A.** Compliance with acute water quality criteria shall be determined from the analytical results of a single grab sample. Acute criteria shall not be exceeded.

**B.** Compliance with chronic water quality criteria shall be determined from the arithmetic mean of the analytical results of samples collected using applicable protocols. Chronic criteria shall not be exceeded more than once every three years.

**C.** Compliance with water quality standards for total ammonia shall be determined by performing the biomonitoring procedures set out in Subsections D and E of 20.6.4.14 NMAC, or by attainment of applicable ammonia criteria set out in Subsections K, L and M of 20.6.4.900 NMAC.

**D.** Compliance with the human health-organism only criteria shall be determined from the analytical results of representative grab samples, as defined in the water quality management plan. Human health-organism only criteria shall not be exceeded.

**E.** The commission may establish a numeric water quality criterion at a concentration that is below the minimum quantification level. In such cases, the water quality standard is enforceable at the minimum quantification level.

**F.** For compliance with hardness-dependent numeric criteria, dissolved hardness (as mg CaCO<sub>3</sub>/L) shall be determined from a sample taken at the same time that the sample for the contaminant is taken.

**G. Compliance schedules:** It shall be the policy of the commission to allow on a case-by-



case basis the inclusion of a schedule of compliance in a NPDES permit issued to an existing facility. Such schedule of compliance will be for the purpose of providing a permittee with adequate time to make treatment facility modifications necessary to comply with water quality based permit limitations determined to be necessary to implement new or revised water quality standards or wasteload allocation. Compliance schedules may be included in NPDES permits at the time of permit renewal or modification and shall be written to require compliance at the earliest practicable time. Compliance schedules shall also specify milestone dates so as to measure progress towards final project completion (e.g., design completion, construction start, construction completion, date of compliance).

**H.** It is a policy of the commission to allow a temporary standard approved and adopted pursuant to Subsection F of 20.6.4.10 NMAC to be included in the applicable federal Clean Water Act permit as enforceable limits and conditions. The temporary standard and any schedule of actions may be included at the earliest practicable time, and shall specify milestone dates so as to measure progress towards meeting the original standard. [20.6.4.12 NMAC - Rp, 20 NMAC 6.1.1104, 10-12-2000; A, 10-11-2002; Rn, 20.6.4.11 NMAC, 05-23-2005; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.16 PLANNED USE OF A PISCICIDE:** The use of a piscicide registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. Section 136 *et seq.*, and under the New Mexico Pesticide Control Act (NMPCA), Section 76-4-1 *et seq.* NMSA 1978 (1973) in a surface water of the state, shall not be a violation of Subsection F of 20.6.4.13 NMAC when such use is covered by a federal national pollutant discharge elimination system (NPDES) permit or has been approved by the commission under procedures

provided in this section. The use of a piscicide which is covered by a NPDES permit shall require no further review by the commission and the person whose application is covered by the NPDES permit shall meet the additional notification and monitoring requirements outlined in Subsection G of 20.6.4.16 NMAC.

The commission may approve the reasonable use of a piscicide under this section if the proposed use is not covered by a NPDES permit to further a Clean Water Act objective to restore and maintain the physical or biological integrity of surface waters of the state, including restoration of native species.

**A.** Any person seeking commission approval of the use of a piscicide not covered by a NPDES permit shall file a written petition concurrently with the commission and the surface water bureau of the department. The petition shall contain, at a minimum, the following information:

(1) petitioner's name and address;

(2) identity of the piscicide and the period of time (not to exceed five years) or number of applications for which approval is requested;

(3) documentation of registration under FIFRA and NMPCA and certification that the petitioner intends to use the piscicide according to the label directions, for its intended function;

(4) target and potential non-target species in the treated waters and adjacent riparian area, including threatened or endangered species;

(5) potential environmental consequences to the treated waters and the adjacent riparian area, and protocols for limiting such impacts;

(6) surface water of the state proposed for treatment;

(7) results of pre-treatment survey;

(8) evaluation of available alternatives and justification for selecting piscicide

use;

(9) documentation of notice requesting public comment on the proposed use within a 30-day period, including information as described in Paragraphs (1), (2) and (6) of Subsection A of 20.6.4.16 NMAC, provided to:

(a) local political subdivisions;

(b) local water planning entities;

(c) local conservancy and irrigation districts; and

(d) local media outlets, except that the petitioner shall only be required to publish notice in a newspaper of circulation in the locality affected by the proposed use.

(10) copies of public comments received in response to the publication of notice and the petitioner's responses to public comments received;

(9) (11) post-treatment assessment monitoring protocol; and

(10) (12) any other information required by the commission.

**B.** Within [thirty] 30 days of receipt of the petition, the department shall review the petition and file a recommendation with the commission to grant, grant with conditions or deny the petition. The recommendation shall include reasons, and a copy shall be sent to the petitioner by certified mail.

**C.** ~~[The commission shall review the petition and the department's recommendation and shall within 90 days of receipt of the department's recommendation hold a public hearing in the locality affected by the proposed use in accordance with Adjudicatory Procedures, 20.1.3 NMAC. In addition to the public notice requirements in Adjudicatory Procedures, 20.1.3 NMAC, the petitioner shall provide written notice to:~~

(1) ~~local political subdivisions;~~

(2) ~~local water~~



planning entities;

~~(3) local conservancy and irrigation districts; and~~

~~(4) local media outlets, except that the petitioner shall only be required to publish notice in a newspaper of circulation in the locality affected by the proposed use.] The commission shall review the petition, the public comments received under Paragraphs (9) and (10) of Subsection A of 20.6.4.16 NMAC, the petitioner's responses to public comments and the department's technical recommendations for the petition. A public hearing shall be held if the commission determines there is substantial public interest. The commission shall notify the petitioner and those commenting on the petition of the decision whether to hold a hearing and the reasons therefore in writing.~~

**D.** If the commission determines there is substantial public interest a public hearing shall be held within 90 days of receipt of the department's recommendation in the locality affected by the proposed use in accordance with 20.1.3 NMAC, Adjudicatory Procedures - Water Quality Control Commission. Notice of the hearing shall be given in writing by the petitioner to individuals listed under Subsection A of 20.6.4.16 NMAC as well as to individuals who provided public comment under that subsection at least 30 days prior to the hearing.

~~[D.] E.~~ In a hearing provided for in this section or, if no hearing is held, in a commission meeting, the registration of a piscicide under FIFRA and NMPCA shall provide a rebuttable presumption that the determinations of the EPA Administrator in registering the piscicide, as outlined in 7 U.S.C. Section 136a(c)(5), are valid. For purposes of this Section the rebuttable presumptions regarding the piscicide include:

(1) Its composition is such as to warrant the proposed claims for it;

(2) Its labeling and other material submitted

for registration comply with the requirements of FIFRA and NMPCA;

(3) It will perform its intended function without unreasonable adverse effects on the environment; and

(4) When used in accordance with all FIFRA label requirements it will not generally cause unreasonable adverse effects on the environment.

(5) "Unreasonable adverse effects on the environment" has the meaning provided in FIFRA, 7 U.S.C. Section 136(bb): "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide."

~~[E.] F.~~ After a public hearing, or commission meeting if no hearing is held, the commission may grant the petition in whole or in part, may grant the petition subject to conditions, or may deny the petition. In granting any petition in whole or part or subject to conditions, the commission shall require the petitioner to implement post-treatment assessment monitoring and provide notice to the public in the immediate and near downstream vicinity of the application prior to and during the application.

**G.** Any person whose application is covered by a NPDES permit shall provide written notice to local entities as described in Subsection A of 20.6.4.16 NMAC and implement post-treatment assessment monitoring within the application area as described in Subsection F of 20.6.4.16 NMAC.

[20.6.4.16 NMAC - Rn, Paragraph (6) of Subsection F of 20.6.4.12 NMAC, 05-23-2005; A, 05-23-2005; A, 03/02/2017]

**20.6.4.97 EPHEMERAL WATERS: Ephemeral [unclassified] surface waters of the state as identified below and additional ephemeral waters as identified on the department's water quality standards website pursuant to Subsection C of 20.6.4.15 NMAC are subject to**

**the designated uses and criteria as specified in this section. Ephemeral waters classified in 20.6.4.101-899 NMAC are subject to the designated uses and criteria as specified in those sections.**

**A. Designated Uses:** livestock watering, wildlife habitat, limited aquatic life and secondary contact.

**B. Criteria:** the use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses.

**C. Waters:**  
(1) the following waters are designated in the Rio Grande basin:

(a) Cunningham gulch from Santa Fe county road 55 upstream 1.4 miles to a point upstream of the Lac minerals mine, identified as Ortiz mine on U.S. geological survey topographic maps;

(b) an unnamed tributary from Arroyo Hondo upstream 0.4 miles to the Village of Oshara water reclamation facility outfall;

(c) an unnamed tributary from San Pedro creek upstream 0.8 miles to the PAA-KO community sewer outfall;

(d) Inditos draw from the crossing of an unnamed road along a power line one-quarter mile west of McKinley county road 19 upstream to New Mexico highway 509;

(e) an unnamed tributary from the diversion channel connecting Blue canyon and Socorro canyon upstream 0.6 miles to the New Mexico firefighters academy treatment facility outfall;

(f) an unnamed tributary from the Albuquerque metropolitan arroyo flood control authority (AMAFCA) Rio Grande south channel upstream of the crossing of New Mexico highway 47 upstream to I-25;

(g) the south fork of Cañon del Piojo from Canon del Piojo upstream 1.2 miles to an unnamed tributary;

(h) an unnamed tributary from the south fork of Cañon del Piojo upstream 1 mile to



the Resurrection mine outfall;

(i)

Arroyo del Puerto from San Mateo creek upstream 6.8 miles to the Ambrosia Lake mine entrance road;

(j)

an unnamed tributary from San Mateo creek upstream 1.5 miles to the Roca Honda mine facility outfall;

(k)

San Isidro arroyo from the Lee Ranch mine facility outfall upstream to Tinaja arroyo;

(l)

Tinaja arroyo from San Isidro arroyo upstream to Mulatto canyon; and

(m)

Mulatto canyon from Tinaja arroyo upstream to one mile northeast of the Cibola national forest boundary.

(2) the

following waters are designated in the Pecos river basin:

(a) an

unnamed tributary from Hart canyon upstream 1 mile to South Union road;

(b)

Aqua Chiquita from Rio Peñasco upstream to McEwan canyon; and

(c)

Grindstone canyon upstream of Grindstone reservoir.

(3) the

following waters are designated in the Canadian river basin:

(a)

Bracket canyon upstream of the Vermejo river;

(b)

an unnamed tributary from Bracket canyon upstream two miles to the Ancho mine; and

(c)

Gachupin canyon from the Vermejo river upstream two and nine-tenths miles to an unnamed west tributary near the Ancho mine outfall.

(4) in the San

Juan river basin an unnamed tributary of Kim-me-ni-oli wash upstream of the mine outfall.

(5) the

following waters are designated in the Little Colorado river basin:

(a)

Defiance draw from County Road 1 to upstream of West Defiance Road; and

(b)

an unnamed tributary of Defiance draw from McKinley county road 1 upstream to New Mexico highway 264.

(6) the

following waters are designated in the closed basins:

(a)

in the Tularosa river closed basin San Andres canyon downstream of South San Andres canyon; and

(b)

in the Mimbres river closed basin San Vicente arroyo from the Mimbres river upstream to Maudes canyon.

[20.6.4.97 NMAC - N, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.98 INTERMITTENT WATERS: All non-perennial [unclassified] surface waters of the state, except those ephemeral waters included under section 20.6.4.97 NMAC or classified in 20.6.4.101-899 NMAC.**

**A. Designated uses:**

livestock watering, wildlife habitat, marginal warmwater aquatic life and primary contact.

**B. Criteria:** the use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following site-specific criteria apply: the monthly geometric mean of E. coli bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.98 NMAC - N, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.99 PERENNIAL WATERS: All perennial [unclassified] surface waters of the state except those classified in 20.6.4.101-899 NMAC.**

**A. Designated uses:**

Warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** The use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following site-specific criteria apply: the monthly geometric mean of E. coli bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.99 NMAC - N, 05-23-2005;

A, 12-01-2010; A, 03/02/2017]

**20.6.4.101 RIO GRANDE BASIN: The main stem of the Rio Grande from the international boundary with Mexico upstream to one mile [below] downstream of Percha dam.**

**A. Designated uses:**

irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:**

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criterion applies: temperature 34°C (93.2°F) or less.

(2) At mean monthly flows above 350 cfs, the monthly average concentration for: TDS 2,000 mg/L or less, sulfate 500 mg/L or less and chloride 400 mg/L or less.

**C. Remarks:**

sustained flow in the Rio Grande below Caballo reservoir is dependent on release from Caballo reservoir during the irrigation season; at other times of the year, there may be little or no flow.

[20.6.4.101 NMAC - Rp 20 NMAC 6.1.2101, 10-12-2000; A, 12-15-2001; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.102 RIO GRANDE BASIN: The main stem of the Rio Grande from one mile [below]-downstream of Percha dam upstream to Caballo dam.**

**A. Designated**

**uses:** irrigation, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

**C. Remarks:**

sustained flow in the Rio Grande



[below] downstream of Caballo reservoir is dependent on release from Caballo reservoir during the irrigation season; at other times of the year, there may be little or no flow.

[20.6.4.102 NMAC - Rp 20 NMAC 6.1.2102, 10-12-2000; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.110 RIO GRANDE BASIN: The main stem of the Rio Grande from Angostura diversion works upstream to Cochiti dam, excluding the reaches on San Felipe, [Santo Domingo] Kewa and Cochiti pueblos.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, primary contact, coldwater aquatic life and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: pH within the range of 6.6 to 9.0 and temperature 25°C (77°F) or less.

[20.6.4.110 NMAC - Rp 20 NMAC 6.1.2108, 10-12-2000; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.116 RIO GRANDE BASIN: The Rio Chama from its mouth on the Rio Grande upstream to Abiquiu reservoir, perennial reaches of the Rio Tusas, perennial reaches of the Rio Ojo Caliente, perennial reaches of Abiquiu creek and perennial reaches of El Rito creek [below] downstream of the town of El Rito.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, coldwater aquatic life, warmwater aquatic life and secondary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 31°C (87.8°F) or less.

[20.6.4.116 NMAC - Rp 20 NMAC 6.1.2113, 10-12-2000; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.124 RIO GRANDE BASIN: Perennial reaches of Sulphur creek from [its headwaters to] its confluence with Redondo creek upstream to its headwaters.**

**A. Designated uses:** limited aquatic life, wildlife habitat, livestock watering and secondary contact.

**B. Criteria:** the use-specific criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: pH within the range of 2.0 to 9.0, maximum temperature 30°C (86°F), and the chronic aquatic life criteria of Subsections I and J of 20.6.4.900 NMAC.

[20.6.4.124 NMAC - N, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.206 PECOS RIVER BASIN: The main stem of the Pecos river from the headwaters of Brantley reservoir upstream to Salt creek (near Acme), perennial reaches of the Rio Peñasco downstream from state highway 24 near Dunken, perennial reaches of the Rio Hondo and its tributaries [below] downstream of Bonney canyon and perennial reaches of the Rio Felix.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, secondary contact and warmwater aquatic life.

**B. Criteria:** (1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At all flows above 50 cfs: TDS 14,000 mg/L or less, sulfate 3,000 mg/L or less and chloride 6,000 mg/L or less.

[20.6.4.206 NMAC - Rp 20 NMAC 6.1.2206, 10-12-2000; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.305 CANADIAN RIVER BASIN: The main stem of the Canadian river from the headwaters of Conchas reservoir upstream to the New Mexico-Colorado line, perennial reaches of the Conchas river, the Mora**

**river downstream from the USGS gaging station near Shoemaker, the Vermejo river downstream from Rail canyon and perennial reaches of Raton, Chicorica (except Lake Maloya and Lake Alice) and Uña de Gato creeks.**

**A. Designated Uses:** irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** (1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) TDS 3,500 mg/L or less at flows above 10 cfs.

[20.6.4.305 NMAC - Rp 20 NMAC 6.1.2305, 10-12-00; A, 05-23-05; A, 12-01-10; A, 03/02/2017]

[NOTE: This segment was divided effective 12-01-10. The standards for Lake Alice and Lake Maloya are under 20.6.4.311 and 20.6.4.312 NMAC, respectively.]

**20.6.4.317 CANADIAN RIVER BASIN: Springer lake.**

**A. Designated uses:** coolwater aquatic life, irrigation, primary contact, livestock watering, [and] wildlife habitat, and public water supply.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses. [20.6.4.317 NMAC - N, 07-10-2012; A, 03/02/2017]

**20.6.4.403 SAN JUAN RIVER BASIN: The Animas river from its confluence with the San Juan river upstream to Estes arroyo.**

**A. Designated uses:** Public water supply, industrial water supply, irrigation, livestock watering, wildlife habitat, [marginal-coldwater] coolwater aquatic life, and primary contact [and warmwater aquatic life.]

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 29°C (84.2°F) or



less.

[20.6.4.403 NMAC - Rp 20 NMAC 6.1.2403, 10-12-2000; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.404 SAN JUAN RIVER BASIN: The Animas river from Estes arroyo upstream to the ~~New Mexico-Colorado line~~ Southern Ute Indian tribal boundary.**

**A. Designated uses:** ~~[coldwater]~~ Coolwater aquatic life, irrigation, livestock watering, wildlife habitat, public water supply, industrial water supply and primary contact.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: phosphorus (unfiltered sample) 0.1 mg/L or less.  
[20.6.4.404 NMAC - Rp 20 NMAC 6.1.2404, 10-12-2000; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.502 GILA RIVER BASIN: The main stem of the Gila river from Redrock canyon upstream to the confluence of the West Fork Gila river and East Fork Gila river and perennial reaches of tributaries to the Gila river ~~[below]~~ downstream of Mogollon creek.**

**A. Designated uses:** industrial water supply, irrigation, livestock watering, wildlife habitat, marginal coldwater aquatic life, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: 28°C (82.4°F) or less.  
[20.6.4.502 NMAC - Rp 20 NMAC 6.1.2502, 10-12-2000; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.503 GILA RIVER BASIN: All perennial tributaries to the Gila river ~~[above]~~ upstream of and including Mogollon creek.**

**A. Designated uses:** domestic water supply, high quality coldwater aquatic life, irrigation,

livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance of 400 µS/cm or less for all perennial tributaries except West Fork Gila and tributaries thereto, specific conductance of 300 µS/cm or less; ~~[for the main stem of the Gila river above Gila hot springs and 400 µS/cm or less for other reaches;]~~ 32.2°C (90°F) or less in the east fork of the Gila river and Sapillo creek ~~[below]~~ downstream of Lake Roberts; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.  
[20.6.4.503 NMAC - Rp 20 NMAC 6.1.2503, 10-12-2000; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.803 CLOSED BASINS: Perennial reaches of the Mimbres river downstream of the confluence with ~~[Willow Springs]~~ Allie canyon and all perennial reaches of tributaries thereto.**

**A. Designated uses:** ~~[coldwater]~~ Coolwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less and temperature of 30°C (86°F) or less.

[20.6.4.803 NMAC - Rp 20 NMAC 6.1.2803, 10-12-2000; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.804 CLOSED BASINS: Perennial reaches of the Mimbres river upstream of the confluence with ~~[Willow Springs canyon]~~ Allie canyon to Cooney canyon, and all perennial reaches of East Fork Mimbres (McKnight canyon) downstream of the fish barrier, and all perennial reaches**

**thereto.**

**A. Designated uses:** Irrigation, domestic water supply, high quality coldwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: ~~[specific conductance 300 µS/cm or less;]~~ the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.804 NMAC - Rp 20 NMAC 6.1.2804, 10-12-2000; A, 05-23-2005; A, 12-01-2010; A, 03/02/2017]  
**[NOTE: The segment covered by this section was divided effective 02-01-2017. The standards for the additional segment are covered under 20.6.4.807 NMAC.]**

**20.6.4.807 CLOSED BASINS: Perennial reaches of the Mimbres river upstream of Cooney canyon and all perennial reaches thereto, including perennial reaches of East Fork Mimbres river (McKnight canyon) upstream of the fish barrier.**

**A. Designated uses:** Irrigation, domestic water supply, high quality coldwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 µS/cm or less; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.807 NMAC - N, 03/02/2017]

**20.6.4.808 CLOSED BASINS: Perennial and intermittent watercourses within Smelter Tailing Soils Investigation Unit lands at the Chino mines company, excluding those ephemeral waters listed in 20.6.4.809 NMAC and including,**



but not limited to, the mainstem of Lampbright draw, beginning at the confluence of Lampbright draw with Rustler canyon, all tributaries that originate west of Lampbright draw to the intersection of Lampbright draw with U.S. 180, and all tributaries of Whitewater creek that originate east of Whitewater creek from the confluence of Whitewater creek with Bayard canyon downstream to the intersection of Whitewater creek with U.S. 180.

**A. Designated uses:** Warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the acute and chronic aquatic life criteria for copper set forth in Subsection I of 20.6.4.900 NMAC shall be determined by multiplying that criteria by the water effect ratio ("WER") adjustment expressed by the following equation:

$$WER = \frac{[10^{0.588 + (0.703 \times \log \text{DOC}) + (0.395 \times \log \text{Alkalinity})}] \times \left(\frac{100}{\text{Hardness}}\right)^{0.9422}}{19.31}$$

For purposes of this section, dissolved organic carbon (DOC) is expressed in units of milligrams carbon per liter or mg C/L; alkalinity is expressed in units of mg/L as CaCO<sub>3</sub>, and hardness is expressed in units of mg/L as CaCO<sub>3</sub>. In waters that contain alkalinity concentrations greater than 250 mg/L, a value of 250 mg/L shall be used in the equation. In waters that contain DOC concentrations greater than 16 mg C/L, a value of 16 mg C/L shall be used in the equation. In waters that contain hardness concentrations greater than 400 mg/L, a value of 400 mg/L shall be used in the equation. The alkalinity, hardness and DOC concentrations used to calculate the WER value are those measured in the subject water sample.

[20.6.4.808 NMAC - N, 03/02/2017]

**20.6.4.809 CLOSED BASINS:** Ephemeral watercourses within smelter tailing soils investigation unit lands at the Chino mines company, limited to Chino mines property subwatershed drainage A and tributaries thereof, Chino mines property subwatershed drainage B and tributaries thereof (excluding the northwest tributary containing Ash spring and the Chiricahua leopard frog critical habitat transect); Chino mines property subwatershed drainage C and tributaries thereof (excluding reaches containing Bolton spring, the Chiricahua leopard frog critical habitat transect and all reaches in subwatershed C that are upstream of the Chiricahua leopard frog critical habitat); subwatershed drainage D and tributaries thereof (drainages D-1, D-2 and D-3, excluding the southeast tributary in drainage D1 that contains Brown spring) and subwatershed drainage E and all tributaries thereof (drainages E-1, E-2 and E-3).

**A. Designated uses:** Limited aquatic life, livestock watering, wildlife habitat and secondary contact.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the acute aquatic life criteria for copper set forth in Subsection I of 20.6.4.900 NMAC shall be determined by multiplying that criteria by the water effect ratio ("WER") adjustment expressed by the following equation:

$$WER = \frac{[10^{0.588 + (0.703 \times \log \text{DOC}) + (0.395 \times \log \text{Alkalinity})}] \times \left(\frac{100}{\text{Hardness}}\right)^{0.9422}}{19.31}$$

For purposes of this section, dissolved organic carbon (DOC) is expressed in units of milligrams carbon per liter or mg C/L; alkalinity is expressed in units of mg/L as CaCO<sub>3</sub>, and hardness is expressed in units of mg/L as CaCO<sub>3</sub>. In waters that contain alkalinity concentrations greater than 250 mg/L, a value of 250 mg/L shall be used in the equation. In waters that contain DOC concentrations greater than 16 mg C/L, a value of 16 mg C/L shall be used in the equation. In waters that contain hardness concentrations greater than 400 mg/L, a value of 400 mg/L shall be used in the equation. The alkalinity, hardness and DOC concentrations used to calculate the WER value are those measured in the subject water sample.

[20.6.4.809 NMAC - N, 03/02/2017]

**20.6.4.900 CRITERIA APPLICABLE TO EXISTING, DESIGNATED OR ATTAINABLE USES UNLESS OTHERWISE SPECIFIED IN 20.6.4.97 THROUGH 20.6.4.899 NMAC:**

**A. Fish [Culture and] culture and water supply:** Fish culture, public water supply and industrial water supply are designated uses in particular classified waters of the state where these uses are actually being realized. However, no numeric criteria apply uniquely to these uses. Water quality adequate for these uses is ensured by the general criteria and numeric criteria for bacterial quality, pH and temperature.

**B. Domestic water supply:** Surface waters of the state designated for use as domestic water supplies shall not contain substances in concentrations that create a lifetime cancer risk of more than one cancer per 100,000 exposed persons. Those criteria listed under domestic water supply in Subsection J of this section apply to this use.

**C. Irrigation and irrigation storage:** The following numeric criteria and those criteria listed under irrigation in Subsection J of this section apply to this use:



(1) dissolved selenium  
0.13 mg/L

(2) dissolved selenium in presence of >500 mg/L  $\text{SO}_4$  0.25 mg/L.

**D. Primary contact:**

The monthly geometric mean of *E. coli* bacteria of 126 cfu/100 mL or MPN/100 mL and single sample of 410 cfu/100 mL or MPN/100 mL and pH within the range of 6.6 to 9.0 apply to this use. The results for *E. coli* may be reported as either colony forming units (CFU) or the most probable number (MPN) depending on the analytical method used.

**E. Secondary contact:**

The monthly geometric mean of *E. coli* bacteria of 548 cfu/100 mL or MPN/100 mL and single sample of 2507 cfu/100 mL or MPN/100 mL apply to this use. The results for *E. coli* may be reported as either colony forming units (CFU) or the most probable number (MPN), depending on the analytical method used.

**F. Livestock**

**watering:** The criteria listed in Subsection J of this section for livestock watering apply to this use.

**G. Wildlife habitat:**

Wildlife habitat shall be free from any substances at concentrations that are toxic to or will adversely affect plants and animals that use these environments for feeding, drinking, habitat or propagation; can bioaccumulate; or might impair the community of animals in a watershed or the ecological integrity of surface waters of the state. The numeric criteria listed in Subsection J for wildlife habitat apply to this use.

**H. Aquatic life:**

Surface waters of the state with a designated, existing or attainable use of aquatic life shall be free from any substances at concentrations that can impair the community of plants and animals in or the ecological integrity of surface waters of the state. Except as provided in Paragraph (7) of this Subsection, the acute and chronic aquatic life criteria set out in Subsections I, J, K and L of this Section and the human health-organism only criteria set

out in Subsection J of this Section are applicable to all aquatic life use subcategories. In addition, the specific criteria for aquatic life subcategories in the following paragraphs apply to waters classified under the respective designations.

**(1) High**

**quality coldwater:** dissolved oxygen 6.0 mg/L or more, 4T3 temperature 20°C (68°F), maximum temperature 23°C (73°F), pH within the range of 6.6 to 8.8 and specific conductance a segment-specific limit between 300  $\mu\text{S}/\text{cm}$  and 1,500  $\mu\text{S}/\text{cm}$  depending on the natural background in the particular surface water of the state (the intent of this criterion is to prevent excessive increases in dissolved solids which would result in changes in community structure). Where a single segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature and no 4T3 temperature applies.

**(2)**

**Coldwater:** dissolved oxygen 6.0 mg/L or more, 6T3 temperature 20°C (68°F), maximum temperature 24°C (75°F) and pH within the range of 6.6 to 8.8. Where a single segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature and no 6T3 temperature applies.

**(3) Marginal**

**coldwater:** Dissolved oxygen [6] 6.0 mg/L or more, 6T3 temperature 25°C (77°F), maximum temperature 29°C (84°F) and pH within the range from 6.6 to 9.0. Where a single segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature and no 6T3 temperature applies.

**(4)**

**Coolwater:** Dissolved oxygen 5.0 mg/L or more, maximum temperature 29°C (84°F) and pH within the range of 6.6 to 9.0.

**(5)**

**Warmwater:** Dissolved oxygen [5] 5.0 mg/L or more, maximum temperature 32.2°C (90°F) and pH within the range of 6.6 to 9.0. Where a segment-specific temperature criterion is indicated in 20.6.4.101-

899 NMAC, it is the maximum temperature.

**(6) Marginal**

**warmwater:** Dissolved oxygen [5] 5.0 mg/L or more, pH within the range of 6.6 to 9.0 and maximum temperature 32.2°C (90°F). Where a segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature.

**(7) Limited**

**aquatic life:** The acute aquatic life criteria of Subsections I and J of this section apply to this subcategory. Chronic aquatic life criteria do not apply unless adopted on a segment-specific basis. Human health-organism only criteria apply only for persistent pollutants unless adopted on a segment-specific basis.

**I. Hardness-dependent**

acute and chronic aquatic life criteria for metals are calculated using the following equations. The criteria are expressed as a function of dissolved hardness (as mg  $\text{CaCO}_3/\text{L}$ ). With the exception of aluminum, the equations are valid only for dissolved hardness concentrations of 0-400 mg/L. For dissolved hardness concentrations above 400 mg/L, the criteria for 400 mg/L apply. For aluminum the equations are valid only for dissolved hardness concentrations of 0-220 mg/L. For dissolved hardness concentrations above 220 mg/L, the aluminum criteria for 220 mg/L apply.

**(1) Acute**

**aquatic life criteria for metals:** The equation to calculate acute criteria in  $\mu\text{g}/\text{L}$  is  $\exp(m_A [\ln(\text{hardness})] + b_A)(\text{CF})$ . Except for aluminum, the criteria are based on analysis of dissolved metal. For aluminum, the criteria are based on analysis of total recoverable aluminum in a sample that is filtered to minimize mineral phases as specified by the department. The EPA has disapproved the hardness-based equation for total recoverable aluminum in waters where the pH is less than 6.5 in the receiving stream for federal purposes of the Clean Water Act. The equation parameters are as follows:



Metal	$m_A$	$b_A$	Conversion factor (CF)
Aluminum (Al)	1.3695	1.8308	
Cadmium (Cd)	0.8968	-3.5699	$1.136672 - [(\ln \text{ hardness})(0.041838)]$
Chromium (Cr) III	0.8190	3.7256	0.316
Copper (Cu)	0.9422	-1.700	0.960
Lead (Pb)	1.273	-1.460	$1.46203 - [(\ln \text{ hardness})(0.145712)]$
Manganese (Mn)	0.3331	6.4676	
Nickel (Ni)	0.8460	2.255	0.998
Silver (Ag)	1.72	-6.59	0.85
Zinc (Zn)	0.9094	0.9095	0.978

(2) **Chronic aquatic life criteria for metals:** The equation to calculate chronic criteria in  $\mu\text{g/L}$  is  $\exp(m_c[\ln(\text{hardness})] + b_c)(\text{CF})$ . Except for aluminum, the criteria are based on analysis of dissolved metal. For aluminum, the criteria are based on analysis of total recoverable aluminum in a sample that is filtered to minimize mineral phases as specified by the department. The EPA has disapproved the hardness-based equation for total recoverable aluminum in waters where the pH is less than 6.5 in the receiving stream for federal purposes of the Clean Water Act. The equation parameters are as follows:

Metal	$m_c$	$b_c$	Conversion factor (CF)
Aluminum (Al)	1.3695	0.9161	
Cadmium (Cd)	0.7647	-4.2180	$1.101672 - [(\ln \text{ hardness})(0.041838)]$
Chromium (Cr) III	0.8190	0.6848	0.860
Copper (Cu)	0.8545	-1.702	0.960
Lead (Pb)	1.273	-4.705	$1.46203 - [(\ln \text{ hardness})(0.145712)]$
Manganese (Mn)	0.3331	5.8743	
Nickel (Ni)	0.8460	0.0584	0.997
Zinc (Zn)	0.9094	0.6235	0.986

(3) Selected values of calculated acute and chronic criteria ( $\mu\text{g/L}$ ).

Hardness as $[\text{Ca}^{++} + \text{Mg}^{++}] \text{ CaCO}_3$ , dissolved (mg/L)		Al	Cd	Cr III	Cu	Pb	Mn	Ni	Ag	Zn
25	Acute	512	0.51	180	4	14	1,881	140	0.3	45
	Chronic	205	0.17	24	3	1	1,040	16		34
30	Acute	658	0.59	210	4	17	1,999	170	0.4	54
	Chronic	263	0.19	28	3	1	1,105	19		41
40	Acute	975	0.76	270	6	24	2,200	220	0.7	70
	Chronic	391	0.23	35	4	1	1,216	24		53
50	Acute	1,324	0.91	320	7	30	2,370	260	1.0	85
	Chronic	530	0.28	42	5	1	1,309	29		65
60	Acute	1,699	1.07	370	8	37	2,519	300	1.3	101
	Chronic	681	0.31	49	6	1	1,391	34		76
70	Acute	2,099	1.22	430	10	44	2,651	350	1.7	116
	Chronic	841	0.35	55	7	2	1,465	38		88
80	Acute	2,520	1.37	470	11	51	2,772	390	2.2	131
	Chronic	1,010	0.39	62	7	2	1,531	43		99



Hardness as $\text{CaCO}_3$ , dissolved (mg/L)		Al	Cd	Cr III	Cu	Pb	Mn	Ni	Ag	Zn
90	Acute	2,961	1.51	520	12	58	2,883	430	2.7	145
	Chronic	1,186	0.42	68	8	2	1,593	48		110
100	Acute	3,421	1.65	570	13	65	2,986	470	3.2	160
	Chronic	1,370	0.45	74	9	3	1,650	52		121
200	Acute	8,838	2.98	1,010	26	140	3,761	840	11	301
	Chronic	3,541	0.75	130	16	5	2,078	90		228
220	Acute	10,071	<u>3.23</u>	<u>1,087</u>	<u>28</u>	<u>151</u>	<u>3,882</u>	<u>912</u>	<u>13</u>	<u>328</u>
	Chronic	4,035	<u>0.80</u>	<u>141</u>	<u>18</u>	<u>6</u>	<u>2,145</u>	<u>101</u>		<u>248</u>
300	Acute	[10,071]	4.21	1,400	38	210	4,305	1190	21	435
	Chronic	[4,035]	1.00	180	23	8	2,379	130		329
400 and above	Acute	[10,071]	5.38	1,770	50	280	4,738	1510	35	564
	Chronic	[4,035]	1.22	230	29	11	2,618	170		428

**J. Use-Specific Numeric criteria.**

(1) [Notes applicable to the table of numeric criteria in Paragraph (2) of this subsection:

(a) Where the letter "a" is indicated in a cell, the criterion is hardness-based and can be referenced in Subsection I of 20.6.4.900 NMAC:

(b) Where the letter "b" is indicated in a cell, the criterion can be referenced in Subsection C of 20.6.4.900 NMAC:

(c) Criteria are in  $\mu\text{g/L}$  unless otherwise indicated:

(d) Abbreviations are as follows: CAS - chemical abstracts service (see definition for "CAS number" in 20.6.4.7 NMAC); DWS - domestic water supply; Irr - irrigation; LW - livestock watering; WH - wildlife habitat; HH-OO - human health-organism only; C - cancer-causing; P - persistent:

(e) The criteria are based on analysis of an unfiltered sample unless otherwise indicated. The acute and chronic aquatic life criteria for aluminum are based on analysis of total recoverable aluminum in a sample that is filtered to minimize mineral phases as specified by the department:

(f) The criteria listed under human health-organism only (HH-OO) are intended to protect human health when aquatic organisms are consumed from waters containing pollutants. These criteria do not protect the aquatic life itself; rather, they protect the health of humans who ingest fish or other aquatic organisms:

(g) The dioxin criteria apply to the sum of the dioxin toxicity equivalents expressed as 2,3,7,8-TCDD dioxin:

(h) The criteria for polychlorinated biphenyls (PCBs) applies to the sum of all congeners, to the sum of all homologs or to the sum of all aroclors:

(2) **Table of numeric criteria:** The following table sets forth the numeric criteria applicable to existing, designated and attainable uses. For metals, criteria represent the total sample fraction unless otherwise specified in the table. Additional criteria that are not compatible with this table are found in Subsections A through I, K and L of this section.

Pollutant	CAS Number	DWS	Irr/Irr Storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Aluminum, dissolved	7429-90-5		5,000						
Aluminum, total recoverable	7429-90-5					a	a		
Antimony, dissolved	7440-36-0	6						640	P
Arsenic, dissolved	7440-38-2	10	100	200		340	150	9.0	C,P
Asbestos	1332-21-4	7,000,000 fibers/L							



Pollutant	CAS Number	DWS	Irr/Irr Storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Barium, dissolved	7440-39-3	2,000							
Beryllium, dissolved	7440-41-7	4							
Boron, dissolved	7440-42-8		750	5,000					
Cadmium, dissolved	7440-43-9	5	10	50		a	a		
Chlorine residual	7782-50-5				11	19	11		
Chromium III, dissolved	16065-83-1					a	a		
Chromium VI, dissolved	18540-29-9					16	11		
Chromium, dissolved	7440-47-3	100	100	1,000					
Cobalt, dissolved	7440-48-4		50	1,000					
Copper, dissolved	7440-50-8	1300	200	500		a	a		
Cyanide, total recoverable	57-12-5	200			5.2	22.0	5.2	140	
Lead, dissolved	7439-92-1	15	5,000	100		a	a		
Manganese, dissolved	7439-96-5					a	a		
Mercury	7439-97-6	2		10	0.77				
Mercury, dissolved	7439-97-6					1.4	0.77		
Methylmercury	22967-92-6							0.3 mg/kg in fish tissue	P
Molybdenum, dissolved	7439-98-7		1,000						
Molybdenum, total recoverable	7439-98-7					7,920	1,895		
Nickel, dissolved	7440-02-0	700				a	a	4,600	P
Nitrate as N		10 mg/L							
Nitrite + Nitrate				132 mg/L					
Selenium, dissolved	7782-49-2	50	b	50				4,200	P
Selenium, total recoverable	7782-49-2				5.0	20.0	5.0		
Silver, dissolved	7440-22-4					a			
Thallium, dissolved	7440-28-0	2						0.47	P
Uranium, dissolved	7440-61-1	30							
Vanadium, dissolved	7440-62-2		100	100					
Zinc, dissolved	7440-66-6	10,500	2,000	25,000		a	a	26,000	P
Adjusted gross alpha		15 pCi/L		15 pCi/L					
Radium 226 + Radium 228		5 pCi/L		30.0 pCi/L					
Strontium 90		8 pCi/L							



Pollutant	CAS Number	DWS	Irr/Irr Storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Tritium		20,000 pCi/L		20,000 pCi/L					
Acenaphthene	83-32-9	2,100						990	
Acrolein	107-02-8	18						9	
Acrylonitrile	107-13-1	0.65						2.5	C
Aldrin	309-00-2	0.021				3.0		0.00050	C,P
Anthracene	120-12-7	10,500						40,000	
Benzene	71-43-2	5						510	C
Benzidine	92-87-5	0.0015						0.0020	C
[Benzoanthracene] Benzo(a)anthracene	56-55-3	0.048						0.18	C
[Benzoapyrene] Benzo(a)pyrene	50-32-8	0.2						0.18	C,P
Benzo(b)fluoranthene	205-99-2	0.048						0.18	C
Benzo(k)fluoranthene	207-08-9	0.048						0.18	C
alpha-BHC	319-84-6	0.056						0.049	C
beta-BHC	319-85-7	0.091						0.17	C
Gamma-BHC (Lindane)	58-89-9	0.20				0.95		1.8	
Bis(2-chloroethyl) ether	111-44-4	0.30						5.3	C
Bis(2-chloroisopropyl) ether	108-60-1	1,400						65,000	
Bis(2-ethylhexyl) phthalate	[117817] 117-81-7	6						22	C
Bromoform	75-25-2	44						1,400	C
Butylbenzyl phthalate	85-68-7	7,000						1,900	
Carbon tetrachloride	56-23-5	5						16	C
Chlordane	57-74-9	2				2.4	0.0043	0.0081	C,P
Chlorobenzene	108-90-7	100						1,600	
Chlorodibromomethane	124-48-1	4.2						130	C
Chloroform	67-66-3	57						4,700	C
2-Chloronaphthalene	91-58-7	2,800						1,600	
2-Chlorophenol	95-57-8	175						150	
Chrysene	218-01-9	0.048						0.18	C
Diazinon	333-41-5					0.17	0.17		
4,4'-DDT and derivatives		1.0			0.001	1.1	0.001	0.0022	C,P
Dibenzo(a,h)anthracene	53-70-3	0.048						0.18	C
Dibutyl phthalate	84-74-2	3,500						4,500	
1,2-Dichlorobenzene	95-50-1	600						1,300	
1,3-Dichlorobenzene	541-73-1	469						960	



Pollutant	CAS Number	DWS	Irr/Irr Storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
1,4-Dichlorobenzene	106-46-7	75						190	
3,3'-Dichlorobenzidine	91-94-1	0.78						0.28	C
Dichlorobromomethane	75-27-4	5.6						170	C
1,2-Dichloroethane	107-06-2	5						370	C
1,1-Dichloroethylene	75-35-4	7						7,100	C
2,4-Dichlorophenol	120-83-2	105						290	
1,2-Dichloropropane	78-87-5	5.0						150	C
1,3-Dichloropropene	542-75-6	3.5						210	C
Dieldrin	60-57-1	0.022				0.24	0.056	0.00054	C,P
Diethyl phthalate	84-66-2	28,000						44,000	
Dimethyl phthalate	131-11-3	350,000						1,100,000	
2,4-Dimethylphenol	105-67-9	700						850	
2,4-Dinitrophenol	51-28-5	70						5,300	
2,4-Dinitrotoluene	121-14-2	1.1						34	C
Dioxin		3.0E-05						5.1E-08	C,P
1,2-Diphenylhydrazine	122-66-7	0.44						2.0	C
alpha-Endosulfan	959-98-8	62				0.22	0.056	89	
beta-Endosulfan	33213-65-9	62				0.22	0.056	89	
Endosulfan sulfate	1031-07-8	62						89	
Endrin	72-20-8	2				0.086	0.036	0.060	
Endrin aldehyde	7421-93-4	10.5						0.30	
Ethylbenzene	100-41-4	700						2,100	
Fluoranthene	206-44-0	1,400						140	
Fluorene	86-73-7	1,400						5,300	
Heptachlor	76-44-8	0.40				0.52	0.0038	0.00079	C
Heptachlor epoxide	1024-57-3	0.20				0.52	0.0038	0.00039	C
Hexachlorobenzene	118-74-1	1						0.0029	C,P
Hexachlorobutadiene	87-68-3	4.5						180	C
Hexachlorocyclopentadiene	77-47-4	50						1,100	
Hexachloroethane	67-72-1	25						33	C
Ideno(1,2,3-cd)pyrene	193-39-5	0.048						0.18	C
Isophorone	78-59-1	368						9,600	C
Methyl bromide	74-83-9	49						1,500	
2-Methyl-4,6-dinitrophenol	534-52-1	14						280	
Methylene chloride	75-09-2	5						5,900	C



Pollutant	CAS Number	DWS	Irr/Irr Storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Nitrobenzene	98-95-3	18						690	
N-Nitrosodimethylamine	62-75-9	0.0069						30	C
N-Nitrosodi-n-propylamine	621-64-7	0.050						5.1	C
N-Nitrosodiphenylamine	86-30-6	71						60	C
Nonylphenol	84852-15-3					28	6.6		
Polychlorinated [Byphenyls] Biphenyls (PCBs)	1336-36-3	0.50			0.014	2	0.014	0.00064	C,P
Pentachlorophenol	87-86-5	1.0				19	15	30	C
Phenol	108-95-2	10,500						860,000	
Pyrene	129-00-0	1,050						4,000	
1,1,2,2-Tetrachloroethane	79-34-5	1.8						40	C
Tetrachloroethylene	127-18-4	5						33	C,P
Toluene	108-88-3	1,000						15,000	
Toxaphene	8001-35-2	3				0.73	0.0002	0.0028	C
1,2-Trans-dichloroethylene	156-60-5	100						10,000	
1,2,4-Trichlorobenzene	120-82-1	70						70	
1,1,1-Trichloroethane	71-55-6	200							
1,1,2-Trichloroethane	79-00-5	5						160	C
Trichloroethylene	79-01-6	5						300	C
2,4,6-Trichlorophenol	88-06-2	32						24	C
Vinyl chloride	75-01-4	2						24	C

(2) Notes applicable to the table of numeric criteria in Paragraph (1) of this Subsection.

(a) Where the letter "a" is indicated in a cell, the criterion is hardness-based and can be referenced in Subsection I of 20.6.4.900 NMAC.

(b) Where the letter "b" is indicated in a cell, the criterion can be referenced in Subsection C of 20.6.4.900 NMAC.

(c) Criteria are in µg/L unless otherwise indicated.

(d) Abbreviations are as follows: CAS - chemical abstracts service (see definition for "CAS number" in 20.6.4.7 NMAC); DWS - domestic water supply; Irr/Irr storage- irrigation or irrigation storage; LW - livestock watering; WH - wildlife habitat; HH-OO - human health-organism only; C - cancer-causing; P - persistent.

(e) The criteria are based on analysis of an unfiltered sample unless otherwise indicated. The acute and chronic aquatic life criteria for aluminum are based on analysis of total recoverable aluminum in a sample that is filtered to minimize mineral phases as specified by the department.

(f) The criteria listed under human health-organism only (HH-OO) are intended to protect human health when aquatic organisms are consumed from waters containing pollutants. These criteria do not protect the aquatic life itself; rather, they protect the health of humans who ingest fish or other aquatic organisms.

(g) The dioxin criteria apply to the sum of the dioxin toxicity equivalents expressed as 2,3,7,8-TCDD dioxin.

(h) The criteria for polychlorinated biphenyls (PCBs) apply to the sum of all congeners, to the sum of all homologs or to the sum of all aroclors.

L. Chronic aquatic life criteria for total ammonia are dependent on pH, temperature and whether fish in early life stages are present or absent. The criteria are based on analysis of unfiltered samples and are calculated



according to the equations in Paragraphs (1) and (2) of this subsection. For temperatures from below 0 to 14°C, the criteria for [0°C] 14°C apply; for temperatures above 30°C, the criteria for 30°C apply. For pH values below 6.5, the criteria for 6.5 apply; for pH values above 9.0, the criteria for 9.0 apply.

**(1) Chronic aquatic life criteria for total ammonia when fish early life stages are present:**

**(a)** The equation to calculate chronic criteria in mg/L as N is:

$$((0.0577/(1 + 10^{7.688-pH})) + (2.487/(1 + 10^{pH-7.688}))) \times \text{MIN}(2.85, 1.45 \times 10^{0.028 \times (25-T)})$$

**(b)** Selected values of calculated chronic criteria in mg/L as N:

pH	Temperature (°C)										
	[0 and below]	14 and below	15	16	18	20	22	24	26	28	30 and above
6.5 and below	[6.67]	6.67	6.46	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	[6.57]	6.57	6.36	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	[6.44]	6.44	6.25	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	[6.29]	6.29	6.10	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	[6.12]	6.12	5.93	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	[5.91]	5.91	5.73	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	[5.67]	5.67	5.49	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	[5.39]	5.39	5.22	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	[5.08]	5.08	4.92	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	[4.73]	4.73	4.59	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	[4.36]	4.36	4.23	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	[3.98]	3.98	3.85	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	[3.58]	3.58	3.47	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	[3.18]	3.18	3.09	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	[2.80]	2.80	2.71	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	[2.43]	2.43	2.36	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	[2.10]	2.10	2.03	1.91	1.68	1.47	1.29	1.14	1.00	0.879	0.773
8.2	[1.79]	1.79	1.74	1.63	1.43	1.26	1.11	0.973	0.855	0.752	0.661
8.3	[1.52]	1.52	1.48	1.39	1.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	[1.29]	1.29	1.25	1.17	1.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	[1.09]	1.09	1.06	0.990	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	[0.920]	0.920	0.892	0.836	0.735	0.646	0.568	0.499	0.439	0.386	0.339
8.7	[0.778]	0.778	0.754	0.707	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	[0.661]	0.661	0.641	0.601	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	[0.565]	0.565	0.548	0.513	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0 and above	[0.486]	0.486	0.471	0.442	0.389	0.342	0.300	0.264	0.232	0.204	0.179

**(2) Chronic aquatic life criteria for total ammonia when fish early life stages are absent:**

**(a)** The equation to calculate chronic criteria in mg/L as N is:

$$((0.0577/(1 + 10^{7.688-pH})) + (2.487/(1 + 10^{pH-7.688}))) \times 1.45 \times 10^{0.028 \times (25-\text{MAX}(T,7))}$$

**(b)** Selected values of calculated chronic criteria in mg/L as N:

pH	Temperature (°C)									
	[0 and below]	7 and below	8	9	10	11	12	13	14	15 and above
6.5 and below	[10.8]	10.8	10.1	9.51	8.92	8.36	7.84	7.35	6.89	6.46



pH	Temperature (°C)									
	[0 and below]	7 and below	8	9	10	11	12	13	14	15 and above
6.6	[10.7]	10.7	9.99	9.37	8.79	8.24	7.72	7.24	6.79	6.36
6.7	[10.5]	10.5	9.81	9.20	8.62	8.08	7.58	7.11	6.66	6.25
6.8	[10.2]	10.2	9.58	8.98	8.42	7.90	7.40	6.94	6.51	6.10
6.9	[9.93]	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.93
7.0	[9.60]	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.73
7.1	[9.20]	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.49
7.2	[8.75]	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	5.22
7.3	[8.24]	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.92
7.4	[7.69]	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.59
7.5	[7.09]	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	4.23
7.6	[6.46]	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.85
7.7	[5.81]	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.47
7.8	[5.17]	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	3.09
7.9	[4.54]	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.71
8.0	[3.95]	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.36
8.1	[3.41]	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	2.03
8.2	[2.91]	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.74
8.3	[2.47]	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.48
8.4	[2.09]	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.25
8.5	[1.77]	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	1.06
8.6	[1.49]	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.892
8.7	[1.26]	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.754
8.8	[1.07]	1.07	1.01	0.944	0.855	0.829	0.778	0.729	0.684	0.641
8.9	[0.917]	0.917	0.860	0.806	0.756	0.709	0.664	0.623	0.584	0.548
9.0 and above	[0.790]	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.471

At 15°C and above, the criterion for fish early life stages absent is the same as the criterion for fish early life stages present (refer to table in Paragraph (1) of this subsection).

[20.6.4.900 NMAC - Rp 20 NMAC 6.1.3100, 10-12-2000; A, 10-11-2002; A, 05-23-2005; A, 07-17-2005; A, 12-01-2010; A, 03/02/2017]

**20.6.4.901 PUBLICATION REFERENCES:** These documents are intended as guidance and are available for public review during regular business hours at the offices of the surface water quality bureau. Copies of these documents have also been filed with the New Mexico state records center in order to provide greater access to this information.

A. American public health association. 1992. *Standard methods for the examination of water and wastewater; 18th Edition*. Washington, D.C. 1048 p.

B. American public health association. 1995. *Standard methods for the examination of water and wastewater; 19th Edition*. Washington, D.C. 1090 p.

C. American public health association. 1998. *Standard methods for the examination of water and wastewater; 20th Edition*. Washington, D.C. 1112 p.

D. United States geological survey. 1987. *Methods for determination of inorganic substances in water and fluvial sediments, techniques of water-resource investigations of the United States geological survey*. Washington, D.C. 80 p.

E. United States geological survey. 1987. *Methods for the determination of organic substances in water and fluvial sediments, techniques of water-resource investigations of the U.S. geological survey*. Washington, D.C. 80 p.

F. United States environmental protection agency. 1974. *Methods for chemical analysis of water and*



wastes. National environmental research center, Cincinnati, Ohio. (EPA-625-/6-74-003). 298 p.

**G.** New Mexico water quality control commission. 2003. *(208) state of New Mexico water quality management plan*. Santa Fe, New Mexico. 85 p.

**H.** Colorado river basin salinity control forum. [2002] 2014. *[2002]2014 Review, water quality standards for salinity, Colorado river system*. Phoenix, Arizona. 99 p.

**I.** United States environmental protection agency. 2002. *Methods for measuring the acute toxicity of effluents and receiving waters to freshwater and marine organisms*. Office of research and development, Washington, D.C. (5<sup>th</sup> Ed., EPA 821-R-02-012). 293 p. <http://www.epa.gov/ostWET/disk2/atx.pdf>.

**J.** United States environmental protection agency. 2002. *Short-term methods for estimating the chronic toxicity of effluents and receiving waters to freshwater organisms*. Environmental monitoring systems laboratory, Cincinnati, Ohio. ([4th Ed., EPA 821-R-02-01). 335 p.

**K.** Ambient-induced mixing, in United States environmental protection agency. 1991. *Technical support document for water quality-based toxics control*. Office of water, Washington, D.C. (EPA/505/2-90-001). 2 p.

**L.** United States environmental protection agency. 1983. *Technical support manual: waterbody surveys and assessments for conducting use attainability analyses*. Office of water, regulations and standards, Washington, D.C. 251 p. <http://www.epa.gov/OST/library/wqstandards/uaavol123.pdf>.

**M.** United States environmental protection agency. 1984. *Technical support manual: waterbody surveys and assessments for conducting use attainability analyses, volume III: lake systems*. Office of water, regulations and standards, Washington, D.C. 208 p. <http://www.epa.gov/OST/library/wqstandards/uaavol123.pdf>.

[20.6.4.901 NMAC - Rp 20 NMAC 6.1.4000, 10-12-2000; A, 05-23-2005; A, 12-01-2010; A, 02-01-2017]

## End Of Adopted Rules



# 2017 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXVII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 5	January 17
Issue 2	January 19	January 31
Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
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