

NEW MEXICO 
Commission of Public Records
at the State Records Center and Archives
Your Access to Public Information

New Mexico Register

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

Volume XXIX - Issue 14 - July 24, 2018

COPYRIGHT © 2018
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205

Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7942; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

New Mexico Register

Volume XXIX, Issue 14

July 24, 2018

Table of Contents

Notices of Rulemaking and Proposed Rules

HEALTH, DEPARTMENT OF	
Notice of Public Hearing.....	815
PUBLIC EDUCATION DEPARTMENT	
Notice of Proposed Rulemaking.....	815
Notice of Termination of Proposed Rulemaking.....	815
PUBLIC EMPLOYEE LABOR RELATIONS BOARD	
Notice of Proposed Rulemaking.....	816
RACING COMMISSION	
Notice of Public Meeting and Rulemaking Hearing.....	816

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

ENVIRONMENT DEPARTMENT RESOURCE PROTECTION DIVISION

20.5.1 NMAC	R	Petroleum Storage Tanks - General Provisions.....	819
20.5.2 NMAC	R	Registration of Tanks.....	819
20.5.3 NMAC	R	Annual Fee.....	819
20.5.4 NMAC	R	New and Upgraded Storage Tank Systems: Design, Construction and Installation.....	819
20.5.5 NMAC	R	General Operating Requirements.....	819
20.5.6 NMAC	R	Release Detection.....	819
20.5.7 NMAC	R	Reporting and Investigation of Suspected and Confirmed Releases.....	819
20.5.8 NMAC	R	Out-of-Service Systems and Closures.....	819
20.5.9 NMAC	R	Financial Responsibility.....	819
20.5.10 NMAC	R	Administrative Review.....	819
20.5.11 NMAC	R	Lender Liability.....	819
20.5.12 NMAC	R	Corrective Action for Storage Tank Systems Containing Petroleum Products.....	819
20.5.13 NMAC	R	Corrective Action UST Systems Containing Other Regulated Substances.....	819
20.5.14 NMAC	R	Certification of Tank Installers.....	819
20.5.15 NMAC	R	Corrective Action Fund Use and Expenditures.....	819
20.5.16 NMAC	R	Qualification of Persons Performing Corrective Action.....	819
20.5.17 NMAC	R	Corrective Action Fund Administration.....	819
20.5.18 NMAC	R	Operator Training.....	819
20.5.19 NMAC	R	Delivery Prohibition.....	819
20.5.101 NMAC	N	Petroleum Storage Tanks - General Provisions.....	820
20.5.102 NMAC	N	Registration of Tanks.....	834
20.5.103 NMAC	N	Annual Fee.....	837
20.5.104 NMAC	N	Operator Training.....	839

20.5.105 NMAC	N	Certification of Tank Installers and Junior Installers; Requirements for Testers.....	845
20.5.106 NMAC	N	New and Upgraded Underground Storage Tank Systems: Design, Construction and Installation.....	856
20.5.107 NMAC	N	General Operating Requirements for Underground Storage Tank Systems.....	865
20.5.108 NMAC	N	Release Detection for Underground Storage Tanks.....	879
20.5.109 NMAC	N	New and Upgraded Above Ground Storage Tank Systems: Design, Construction and Installation.....	890
20.5.110 NMAC	N	General Operating Requirements for Above Ground Storage Tank Systems.....	901
20.5.111 NMAC	N	Release Detection for Above Ground Storage Tank Systems.....	915
20.5.112 NMAC	N	Above Ground Storage Tank Emergency Generator Systems.....	924
20.5.113 NMAC	N	Underground Storage Tank Emergency Generator Systems.....	927
20.5.114 NMAC	N	Airport Hydrant Fuel Distribution Systems, UST Systems with Field-Constructed Tanks and Hybrid Storage Tank Systems.....	930
20.5.115 NMAC	N	Out-of-Service Storage Tank Systems and Closure.....	936
20.5.116 NMAC	N	Delivery Prohibition.....	941
20.5.117 NMAC	N	Financial Responsibility.....	945
20.5.118 NMAC	N	Reporting and Investigation of Suspected and Confirmed Releases.....	981
20.5.119 NMAC	N	Corrective Action for Storage Tank Systems Containing Petroleum Products.....	984
20.5.120 NMAC	N	Corrective Action for UST Systems Containing Other Regulated Substances.....	1002
20.5.121 NMAC	N	Corrective Action Fund Use and Expenditures.....	1017
20.5.122 NMAC	N	Qualification of Persons Performing Corrective Action.....	1021
20.5.124 NMAC	N	Lender Liability.....	1023
20.5.125 NMAC	N	Administrative Review.....	1029

FINANCE AND ADMINISTRATION, DEPARTMENT OF

2.40.2 NMAC	R	Governing the Approval of Contracts for the Purchase of Professional Services.....	1031
2.40.2 NMAC	N	Governing the Approval of Contracts for the Purchase of Professional Services.....	1031

GAME AND FISH, DEPARTMENT OF

19.31.6 NMAC	N	Migratory Game Bird.....	1036
19.31.16 NMAC	N	Turkey.....	1044

HIGHER EDUCATION DEPARTMENT

5.6.2 NMAC	R	Enrollment Reporting.....	1049
5.6.3 NMAC	R	Variable Scheduling.....	1049
5.6.4 NMAC	R	Enrollment Verification.....	1049
5.6.2 NMAC	N	Data Reporting.....	1049
5.7.6 NMAC	A	Fire Fighter and Peace Officer Survivors Scholarship.....	1050
5.7.20 NMAC	A	Legislative Lottery Scholarship Program.....	1051
5.7.31 NMAC	A	Public Service Law Loan Repayment Program.....	1054

HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

8.139.610 NMAC	A	Program Benefits-Issuance and Receipt.....	1055
----------------	---	--	------

MEDICAL ASSISTANCE DIVISION

8.200.410 NMAC	A	General Recipient Requirements.....	1061
----------------	---	-------------------------------------	------

PUBLIC EDUCATION DEPARTMENT

6.19.7 NMAC	R	High School Readiness System for Career and College.....	1064
6.19.7 NMAC	N	Demonstration of Competency for High School Graduation.....	1064
6.19.9 NMAC	N	Early Literacy Remediation, Interventions, and Family Engagement.....	1070

SUPERINTENDENT OF INSURANCE, OFFICE OF

13.2.2 NMAC	R	Insurance Holding Companies.....	1073
13.2.8 NMAC	R	Credit for Reinsurance.....	1073
13.18.3 NMAC	R	Creditor-Placed Insurance.....	1073
13.2.2 NMAC	N	Insurance Holding Companies.....	1074
13.2.8 NMAC	N	Credit for Reinsurance.....	1086
13.18.3 NMAC	N	Creditor-Placed Insurance.....	1102
13.9.18 NMAC	A	Use of Preferred Risk Mortality Tables.....	1106

Other Material Related To Administrative Law

ENVIRONMENT DEPARTMENT

RESOURCE PROTECTION DIVISION

Notice of Minor, Nonsubstantive Correction.....	1109
---	------

REGULATION AND LICENSING DEPARTMENT

PSYCHOLOGIST EXAMINERS, BOARD OF

Notice of Minor, Nonsubstantive Correction.....	1109
---	------

This Page Intentionally Left Blank

Notices of Rulemaking and Proposed Rules

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the adoption of a new rule, 7.5.5 NMAC, "New Mexico Statewide Immunization Registry." The hearing will be held on September 13, 2018 at 9:00 a.m. in the auditorium of the Harold Runnels Building, located at 1190 St. Francis Drive in Santa Fe, New Mexico. This hearing will be conducted to receive public comment regarding the proposed adoption of a new rule governing the required use of the New Mexico statewide immunization registry, a computerized repository of immunization information maintained by the New Mexico Department of Health.

The proposed new rule is to regulate the registry portion of the New Mexico Immunization Act, NMSA 1978, Sections 24-5-7 through 24-5-15, which requires physicians, nurses, pharmacists and other health care providers to report immunization information to the statewide registry. These rules describe implementation of the registry, including maintenance, submission, reporting, participation, sanctions, and limits on access to the registry.

The legal authority for the proposed rule and the adoption of the rule by the Department is under Subsection E of Section 9-7-6 NMSA 1978, Sections 24-5-7 through 24-5-15 NMSA 1978, Subsection R of Section 24-1-3 NMSA 1978, and Section 24-1-21 NMSA.

Free copies of the full text of the proposed new rule may be obtained online from the New Mexico Department of Health's website at <https://nmhealth.org/publication/rules/> or from Benito M. Gomez using the contact information below.

The public hearing will be conducted to receive public comment on the proposed new rule 7.5.5 NMAC. Any interested member of the public may attend the hearing and submit data, views, or arguments either orally or in writing on the proposed new rule during the hearing. Written public comment may also be submitted prior to the date of the hearing. Please submit any written comments regarding the proposed new rule 7.5.5 NMAC to the attention of :

Benito M. Gomez, Paralegal-Advanced
New Mexico Department of Health
Office of General Counsel
P.O. Box 26110
Santa Fe, NM 87502

Or at:

Benito.Gomez@state.nm.us

All written comments must be received by 5 pm MST on September 12, 2018. All written comments will be published on the agency website at <https://nmhealth.org/about/asd/cmo/rules/> within 3 days of receipt, and will be available at the New Mexico Department of Health Office of General Counsel for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Benito Gomez by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a

public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Monday, August 27, 2018 from 9:00 a.m. to 11:00 a.m. (MDT). The purpose of the public hearing is to receive public input on the proposed new rule 6.63.17 NMAC, Licensure for Attendance Coaches Pre K-12. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement regarding the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text.

The purpose of the proposed new rule 6.63.17 NMAC is to establish a new license for school staff who support attendance interventions for chronically absent students in grades Pre K-12. This rule establishes two levels of licensure for attendance coaches and governs the licensure requirements for persons seeking level 1 and level 2 attendance coach licensure.

Statutory Authorizations:
Sections 22-2-1, NMSA 1978
22-2-2, NMSA 1978
22-10A-17 NMSA 1978
22-10A-5 NMSA 1978

No technical information served as a basis for this proposed rule change.

Stakeholder Engagement.

Stakeholder engagement regarding this proposed rule change was held. Stakeholders included district and school leaders whose work is closely aligned to attendance initiatives.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to Jamie Gonzales, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe,

New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MDT) on Monday, August 27, 2018. The PED encourages the early submission of written comments. The public comment period is from Tuesday July 24, 2018 to Monday, August 27, 2018 at 5:00 p.m. (MDT). The PED will review all feedback received during the public comment period and issue communication regarding the final decision at a later date.

Copies of the proposed new rule may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from Jamie Gonzales at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days' advance notice to provide any special accommodations requested.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF TERMINATION OF PROPOSED RULEMAKING

The New Mexico Public Education Department (PED) gives notice that it is terminating rulemaking for 6.63.17 NMAC, Licensure for Attendance Coaches Pre K-12 as published in Issue 10 of the New Mexico Register, May 29, 2018, pursuant to Subsection C of Section 14-4-5 NMSA 1978.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Employee Labor Relations Board ("NMPELRB"), pursuant to Section 10-7E-9, NMSA 1978 (2017), hereby gives notice that it will conduct a public rulemaking hearing at its offices at 2929 Coors Blvd. NW, Ste. 303, Albuquerque, NM 87102 on Tuesday September 4, 2018, at 9:30 a.m. The purpose of the public hearing is to amend 11.21.1 NMAC to correct typographical errors and obtain input on proposed amendments to Sections 7, 10 and 24. Interested individuals may provide comments at the public hearing and/or submit written comments to Thomas Griego, Executive Director, New Mexico Public Employee Labor Relations Board, 2929 Coors Blvd. NW, Albuquerque, NM 87102 (Tom.Griego@state.nm.us) (505) 831-5422, fax (505) 831-8820. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged. Parties seeking to attend the public hearing telephonically must inform Mr. Matthew Abousleman, Executive Administrative Assistant, at the address or phone number above or by e-mail at MatthewJ.Abousleman@state.nm.us, no later than 5:00 p.m. on Tuesday August 28. Copies of the proposed rules may be accessed on the Board's website (<http://www.pelrb.state.nm.us>), or obtained from Mr. Abousleman at the email address or phone number indicated. Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in either of these meetings are asked to contact Mr. Abousleman as soon as possible. The NMPELRB requires at least 10 days advance notice to provide requested special accommodations.

RACING COMMISSION

NOTICE OF PUBLIC MEETING AND RULEMAKING HEARING

The New Mexico Racing Commission (Commission) will hold a Public Meeting and Rule-Making Hearing on August 23, 2018. The Rule-Making hearing will be held during the Commission's regular business meeting with the public session beginning at 9:30 a.m. in the Ruidoso Downs Race Horse Hall of Fame located in Ruidoso Downs Racetrack, at 26225 US Highway 70, Ruidoso Downs, NM. Copies of the **tentative** agenda may be obtained ten (10) days prior to the meeting from Tina Arce, Paralegal, New Mexico Racing Commission, 4900 Alameda Blvd. NE, Albuquerque, New Mexico 87113, (505) 222-0714, Tina.Arce@state.nm.us. The **final** agenda will be available seventy-two (72) hours prior to the meeting. A copy of the **final** agenda may be obtained from Tina Arce or from the Commission's website, nmrc.state.nm.us.

The purpose of the Rule-Making Hearing is to consider adoption of the proposed amendment to the Rules Governing Horse Racing in New Mexico. Sections 60-1A-1 through 60-1A-30 NMSA 1978 authorizes the Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing.

The purpose of the proposed amendment of Subsection D of 15.2.1.7 NMAC is to include a definition for designated races.

The purpose of the proposed amendment of Subsection N of 15.2.1.7 NMAC is to update the definition of a New Mexico Bred.

The purpose of the proposed amendments of Subsection C of 15.2.1.9 NMAC is to remove the verbiage "At the request of the respondent" and replace with the verbiage "If necessary"; to clarify who is authorized to "issue" a

subpoena and to refer to the taking of a deposition; to clarify the timeframe for any objections to a hearing officer and what would occur if the objections would result in not having a hearing officer available for the matter; specify when the Hearing Officer's Report is; and, replace the word "working" with the word "business".

The purpose of the proposed amendment to Subsection W of 15.2.2.8 NMAC is to update the rule regarding the requirements of the association.

The purpose of the proposed amendment to Subsection D of 15.2.3.8 NMAC is to correct a typographical error, include verbiage from the Association of Racing Commissioner's International model rule and clarify when the horsemen's bookkeeper disburses money.

The purpose of the proposed amendment of Subsection B of 15.2.5.8 NMAC is to not allow the "owner" to enter horses into races because many owners are not familiar with the rules of racing which could result in entering horses into wrong races, not specifying the proper equipment, etc.

The purpose of the proposed amendment of Subsection B of 15.2.6.8 NMAC is to reference the possession and dispensing of compounded medications on association grounds by a licensed veterinarian.

The purpose of the proposed amendment of 15.2.6.9 NMAC is to reference the current version of the ARCI's document, "Uniform Classification Guidelines for Foreign Substances and Recommended Penalties" and "Model Rule".

The purpose of the proposed amendment of Subsection C of 15.2.6.9 NMAC is allow products that contain windaid to be administered orally and do not contain any medications to a horse.

The purpose of the proposed amendment to Subsection J of 15.2.6.9 NMAC is to change the penalty for a licensed trainer that does not present their horse for out of competition testing upon notification and absent extenuating circumstances to be a minimum suspension of 1 year.

The purpose of the proposed amendment to Subsection B of 15.2.6.10 NMAC is remove reference to the Association of Racing Commissioner's International drug testing and quality assurance program external chain of custody guidelines as no such document exists.

The purpose of the proposed Subsection G of 16.47.12 NMAC is to address designated races.

All comments submitted and discussion heard during the Rule-Making Hearing will be considered and discussed by the Commission during the open meeting following the Rule-Making Hearing. The Commission will vote on the proposed rules during the public meeting.

A copy of the proposed rule may also be found on <http://nmrc.state.nm.us/rules-regulations.aspx>. Interested persons may submit their written comments on the proposed rules to the Commission at the address below and/or may appear at the scheduled meeting and make a brief verbal presentation of their view. The written comment period closes at 5:00 p.m. on August 16, 2018. The Commission must receive all written comments at that time. Please submit comments to:

Rosemary Garley, Manager
New Mexico Racing Commission
4900 Alameda Blvd. NE
Albuquerque, NM 87113
Telephone: 505.222.0704
Fax: 505.222.0713
Email: rosemary.garley@state.nm.us

Anyone who requires special

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

End of Notices of Rulemaking and Proposed Rules

This Page Intentionally Left Blank

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.

ENVIRONMENT DEPARTMENT RESOURCE PROTECTION DIVISION

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.1 NMAC, General Provisions (originally filed on June 15, 2009), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.2 NMAC, Registration of Tanks, (originally filed on April 4, 2008), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.3 NMAC, Annual Fee, (originally filed on April 4, 2008), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.4 NMAC, New and Upgraded Storage Tank Systems: Design, Construction, and Installation, (originally filed on April 4, 2008), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.5 NMAC, General Operating Requirements, (originally filed on April 4, 2008), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.6 NMAC, Release Detection, (originally filed on April 4, 2008), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.7 NMAC, Reporting and Investigation of Suspected and Confirmed Releases, (originally filed on April 4, 2008), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.8 NMAC, Out-of-Service Systems and Closure, (originally filed on April 4, 2008), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.9 NMAC, Financial Responsibility, (originally filed on August 15, 2003), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.10 NMAC, Administrative Review, (originally filed on June 15, 2009), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.11 NMAC, Lender Liability, (originally filed on August 15, 2003), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.12 NMAC, Corrective Action for Storage Tank Systems Containing Petroleum Products, (originally filed on June 15, 2009), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.13 NMAC,

Corrective Action for UST Systems Containing Other Regulated Substances, (originally filed on June 15, 2009), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.14 NMAC, Certification of Tank Installers, (originally filed June 15, 2009), adopted on June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.15 NMAC, Corrective Action Fund Use and Expenditures, (originally filed on June 15, 2009), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.16 NMAC, Qualification of Persons Performing Corrective Action, (originally filed on June 15, 2009), adopted on June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.17 NMAC, Corrective Action Fund Administration, (originally filed on June 15, 2009), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.18 NMAC, Operator Training, (originally filed on June 15, 2009), adopted June 13, 2018 and effective July 24, 2018.

At its May 25, 2018 meeting, the Environmental Improvement Board repealed its rule 20.5.19 NMAC, Delivery Prohibition, (originally filed on March 17, 2012), adopted June 13, 2018 and effective July 24, 2018.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 101 GENERAL
PROVISIONS**

20.5.101.1 ISSUING

AGENCY: New Mexico
Environmental Improvement Board.
[20.5.101.1 NMAC - N, 07/24/2018]

20.5.101.2 SCOPE:

A. This part applies to
20.5.101 through 20.5.125 NMAC.

B. Any UST system
holding hazardous wastes that are
listed or identified under Subtitle C
of the federal Resource Conservation
and Recovery Act, or a mixture of
such hazardous waste and other
hazardous regulated substances,
is excluded from these regulations.
This subsection does not apply to any
UST system containing petroleum.

C. Previously deferred
storage tank systems: Airport hydrant
fuel distribution systems and UST
systems with field-constructed tanks
must meet all applicable requirements
of 20.5 NMAC, including those in
20.5.114 NMAC, and storage tank
systems that store fuel for use by
emergency power generators must
meet all applicable requirements
of 20.5 NMAC, including those in
20.5.112 NMAC or 20.5.113 NMAC.

D. The following types
of storage tank systems are excluded
from the requirements of 20.5.102
through
20.5.125 NMAC:

(1) any
wastewater treatment tank systems
and any wastewater treatment tank
system that is part of a wastewater
treatment facility regulated under
Section 402 or 307(b) of the federal
Clean Water Act;

(2) equipment
or machinery that contains regulated
substances for operational purposes

such as hydraulic lift tanks and
electrical equipment tanks;

(3) any
UST system with a capacity of 110
gallons or less or any AST system
with a capacity of 1,320 gallons
or less, or any AST system with a
capacity of 55,000 gallons or more not
associated with an airport hydrant fuel
distribution system or a UST system
with a field-constructed tank;

(4) any UST
system that contains a de minimis
concentration of regulated substances;

(5)
any emergency spill or overflow
containment UST system that is
expeditiously emptied after use;

(6) any storage
tank systems containing radioactive
material that are regulated under the
Atomic Energy Act of 1954;

(7) any
storage tank system that is part of an
emergency generator system at nuclear
power generation facilities regulated
by the nuclear regulatory commission
under 10 CFR Part 50 Appendix A;

E. Partial Exclusions.
20.5.103 NMAC through 20.5.116
NMAC, 20.5.120 NMAC through
20.5.123 NMAC, and 20.5.125
NMAC do not apply to:

(1) wastewater
treatment tanks that do not fall under
Paragraph (1) of Subsection C of this
section;

(2) ASTs with
a capacity of 55,000 gallons or more
associated with airport hydrant fuel
distribution systems;

(3) ASTs with
a capacity of 55,000 gallons or more
associated with UST systems with
field-constructed tanks;

F. Notwithstanding
the foregoing exclusions, no person
may install a storage tank system
listed in Subsection D of this section
for the purpose of storing regulated
substances unless such storage tank
system (whether of single- or double-
walled construction):

(1) will
prevent releases due to corrosion or
structural failure for the operational
life of the storage tank system; and

(2)

is cathodically protected against
corrosion, constructed of non-
corrodible material, steel clad with a
non-corrodible material, or designed
in a manner to prevent the release
or threatened release of any stored
substance; and

(3) the
material used in the construction or
lining of the tank is compatible with
the substance to be stored.

G. 20.5.106 NMAC,
20.5.107 NMAC, 20.5.108 NMAC,
20.5.115 NMAC, 20.5.117 NMAC,
and 20.5.118 NMAC shall not apply
to an existing AST or UST system
which has never contained a regulated
substance until the system is placed in
service.

[20.5.101.2 NMAC - N, 07/24/2018]

20.5.101.3 STATUTORY

AUTHORITY: 20.5.1 through
20.5.25 NMAC are promulgated
pursuant to the provisions of the
Hazardous Waste Act, Sections 74-
4-1 through 74-4-14 NMSA 1978;
the Ground Water Protection Act,
Sections 74-6B-1 through 74-6B-
14 NMSA 1978; and the general
provisions of the Environmental
Improvement Act, Sections 74-1-1
through 74-1-17 NMSA 1978.

[20.5.101.3 NMAC - N, 07/24/2018]

20.5.101.4 DURATION:

Permanent.

[20.5.101.4 NMAC - N, 07/24/2018]

20.5.101.5 EFFECTIVE

DATE: July 24, 2018, unless a
later date is indicated in the bracketed
history note at the end of a section.

[20.5.1.5 NMAC -N, 07/24/2018]

20.5.101.6 OBJECTIVE:

The purpose of this part is to provide
definitions for use in 20.5.101 through
20.5.125 NMAC.

[20.5.101.6 NMAC - N, 07/24/2018]

20.5.101.7 DEFINITIONS:

A. Terms beginning
with numerals or the letter "A."

(1) "Above
ground release" means any release to
the surface of the land or to surface
water. This includes, but is not

limited to, releases from the above ground portion of an underground storage tank system and releases associated with overfills and transfer operations during regulated substance deliveries to or dispensing from an UST system.

(2) "Above ground storage tank" or "AST" means a single tank or combination of manifolded tanks, including pipes connected thereto, that is 1,320 gallons or more, and less than 55,000 gallons, is permanently installed, and is used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of 60 degrees fahrenheit and fourteen and seven-tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. Tanks in vaults and special enclosures are ASTs. A compartment tank with combined total capacity greater than 1,320 gallons and less than 55,000 gallons is an AST and for purposes of these regulations is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. Above ground storage tank does not include (regardless of size) any:

(a) farm, ranch or residential tank used for storing motor fuel for noncommercial purposes;

(b) pipeline facility, including gathering lines regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979, or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(c) surface impoundment, pit, pond or lagoon;

(d) storm water or wastewater collection system;

(e) flow-through process tank;

(f) liquid trap, tank or associated gathering lines or other storage

methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or to oil field service industry operations;

(g) tank used for storing heating oil for consumptive use on the premises where stored;

(h) tanks, bulk terminals, or related pipelines and facilities owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of their refining, processing or pipeline business; bulk plants are not included in the exemption;

(i) multiple tanks at a facility, that are individually less than 1,320 gallons, unless tanks that are siphoned together have a cumulative total capacity greater than 1,320 gallons;

(j) pipes connected to any tank exempted by Subparagraphs (a) through (i) of this paragraph.

(3) "Accidental release" means any sudden or non-sudden release neither expected nor intended by the tank owner or operator of petroleum or other regulated substance from a storage tank that results in a need for corrective action or compensation for bodily injury or property damage.

(4) "Airport hydrant fuel distribution system" (also called airport hydrant system) means an AST or UST system or a combination thereof which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more regulated tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier. AST systems with a capacity of 55,000 gallons or more associated with airport hydrant fuel distribution systems must comply with 20.5.101 NMAC, 20.5.102 NMAC, 20.5.117 NMAC, 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.124 NMAC.

(5) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps associated with a storage tank.

(6) "Applicable standards" means the most relevant target concentrations that legally apply to a site.

(7) "AST system" means an above ground storage tank and its associated ancillary equipment and containment system, if any.

B. Terms beginning with the letter "B."

(1) "Basin sump" means a liquid-tight collection container with no valves, joints or other penetrations.

(2) "Below ground release" means any release to the subsurface of the land or to groundwater. This includes, but is not limited to, releases from the below ground portions of a storage tank system and releases associated with overfills and transfer operations as the regulated substance is delivered to or dispensed from a storage tank.

(3) "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with materials so that physical inspection is precluded.

(4) "Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(5) "Bulk plant" means a facility which is not a bulk terminal, and which is used for the temporary storage of petroleum products prior to delivery to gasoline stations, convenience stores, and commercial accounts, which is smaller than a bulk terminal and is not equipped with any processing equipment.

(6) "Bulk terminal" means a large facility for storing and handling petroleum

products that receives and stores bulk deliveries of gasoline and other products from a pipeline, barges, or directly from a nearby refinery. Equipment at the terminal facility is usually capable of further processing the product, including but not limited to: injection of additives or conversion of gasoline vapors received from transports after making deliveries using stage one vapor recovery back to liquid form.

(7) "Bureau" means the New Mexico petroleum storage tank bureau.

C. Terms beginning with the letter "C."

(1) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell through the application of either galvanic anodes or impressed current.

(2) "Certified installer" refers generally to both AST and UST certified installers.

(3) "Certified installer-AST" means an individual who has been certified by the department under 20.5.105 NMAC to install, replace, repair, and modify AST systems in this state.

(4) "Certified installer-UST" means an individual who has been certified by the department under 20.5.105 NMAC to install, replace, repair, and modify UST systems in this state.

(5) "Certified junior installer" refers generally to both AST and UST certified junior installers.

(6) "Certified junior installer-AST" means an individual who has been certified by the department under 20.5.105 NMAC to install, replace, repair, and modify spill prevention equipment and overfill prevention equipment on AST systems regulated under 20.5 NMAC.

(7) "Certified junior installer-UST" means an individual who has been certified by the department under 20.5.105 NMAC to install, replace, repair, and modify spill prevention equipment

and overfill prevention equipment on UST systems regulated under 20.5 NMAC.

(8) "Certified operator" means a class A, B, or C operator trained and certified according to the requirements of 20.5.105 NMAC.

(9) "Change in service" means removing a regulated substance from a storage tank system and placing something in the system that is not a regulated substance.

(10) "Chief financial officer," in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

(11) "Class A operator" means the individual who has primary responsibility to operate and maintain the storage tank system in accordance with 20.5 NMAC. The class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

(12) "Class B operator" means the individual who has day-to-day responsibility for implementing the requirements of 20.5 NMAC. The class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the storage tank system.

(13) "Class C operator" means the individual responsible for initially addressing emergencies presented by a spill or release from a storage tank system. The class C operator typically controls or monitors the dispensing or sale of regulated substances.

(14) "Class I liquid" means any flammable liquid having a flashpoint below 100.0 degrees fahrenheit (37.8 degrees celsius) and that meets one of the following sub classes:

(a) Class IA liquids include those having flashpoints below 73 degrees fahrenheit (22.8 degrees celsius) and boiling points below 100 degrees

fahrenheit (37.8 degrees celsius);

(b) Class IB liquids include those having flashpoints below 73 degrees fahrenheit (22.8 degrees celsius) and boiling points at or above 100 degrees fahrenheit (37.8 degrees celsius); or

(c) Class IC liquids include those having flash points at or above 73 degrees fahrenheit (22.8 degrees celsius) but below 100 degrees fahrenheit (37.8 degrees celsius).

(15) "Class II Liquid" means a combustible liquid having flash points at or above 100 degrees fahrenheit (37.8 degrees celsius) and below 140 degrees fahrenheit (60 degrees), except any mixture having components with flashpoints of 200 degrees fahrenheit (93.3 degrees celsius) or higher, the volume of which make up ninety-nine percent or more of the total volume of the mixture.

(16) "Class III Liquid" means a combustible liquid having flashpoints at or above 140 degrees fahrenheit (60 degrees celsius) and that meets one of the following sub classes. Where the term "Class III liquid" is used, it shall mean only Class IIIA liquids.

(a) Class IIIA liquids include those having flash points at or above 140 degrees fahrenheit (60 degrees celsius) and below 200 degrees fahrenheit (93.3 degrees celsius) except any mixture having components with flashpoints of 200 degrees fahrenheit (93.3 degrees celsius), or higher, the total volume of which make up ninety-nine percent or more of the total volume of the mixture;

(b) Class IIIB liquids include those having flash points at or above 200 degrees fahrenheit (93.3 degrees celsius);

(c) any liquid that has a flash point at or above 200 degrees fahrenheit or 93 degrees celsius.

(17) "Community water system" means a public water system which serves

at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(18)

“Compatible” means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the storage tank system and under varied environmental conditions (i.e., at different temperatures).

(19)

“Connected piping” means all above ground and underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual storage tank system, the piping which joins the two storage tank systems should be allocated equally between them.

(20)

“Consumptive use” with respect to heating oil means the oil is burned on the premises.

(21) “Contain”

means the stopping of further migration of a regulated substance from a release into or through groundwater, surface water or soil.

(22)

“Containment” means that contamination from a release has been contained and is not spreading, migrating, spilling, infiltrating or otherwise traveling into uncontaminated areas. Verification of containment requires the performance of physical measurements that provide positive proof that contamination is contained.

(23)

“Containment sump” means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump),

or at other points in the piping run (transition or intermediate sump). Containment sumps may have valves, joints or penetrations, such as piping penetrations.

(24)

“Contaminant” means any regulated substance as defined in this section, any constituent of a regulated substance, or any combination of a regulated substance or constituent thereof with any other substance or matter.

(25)

“Contaminant of concern” means any contaminant which is suspected of being released at the site based on site history for which:

(a)

the New Mexico water quality control commission has adopted standards pursuant to the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978;

(b)

the New Mexico environmental improvement board has adopted standards, action levels, risk-based screening levels or site-specific target levels pursuant to the Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act; or

(c)

the New Mexico environment department has established or approved site-specific target levels pursuant to the Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act.

(26)

“Contaminant saturated soil” means soil exclusive of the water table and capillary fringe in which non-aqueous phase liquid is observable in the soil or, if sufficiently liquid, drains from the soil when the soil is suspended on filter paper or its equivalent.

(27)

“Contaminated soil” means soil containing detectable quantities of contaminants of concern.

(28)

“Contractor” means a person who has an agreement to perform corrective action on behalf of the state or owners or operators.

(29)

“Controlling interest” means direct ownership or other legal control of at least fifty percent of the voting stock of another entity.

(30) “Corrective

action” means an action taken to investigate, minimize, eliminate, or clean up a release to protect the public health, safety, and welfare or the environment.

(31) “Corrective

action fund” or “fund” means the fund created pursuant to the Ground Water Protection Act, Section 74-6B-7 NMSA 1978, to pay or reimburse for corrective action performed pursuant to 20.5 NMAC and the Ground Water Protection Act.

(32) “Corrosion

expert” means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the national association of corrosion engineers international (NACE). A corrosion expert shall only perform the specific activities required by these rules for which he is qualified, certified, registered or licensed; for example, a NACE licensed cathodic protection tester shall not design a cathodic protection system unless he is also a NACE licensed cathodic protection technologist, specialist or has another equivalent qualification, certification, registration or license.

(33) “Corrosion

prevention plan” means a plan approved in writing by a corrosion expert for a UST or AST or associated piping, or secondary containment, which plan is designed to maintain the integrity of the tank or piping for its useful life.

(34) “Corrosion

protection” means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell through the application of either galvanic

anodes or impressed current, or by isolating the metal surface from soil, water, or other elements that can cause corrosion, including but not limited to application of a paint or coating material approved for use as corrosion protection.

(35) “Critical junctures” means the steps of an installation, replacement, modification, repair or removal of a storage tank system or any part of a storage tank system, which are important to the prevention of releases and which are more specifically described in 20.5.106, 20.5.107, 20.5.109, 20.5.110 and 20.5.115 NMAC.

D. Terms beginning with the letter “D.”

(1) “Deductible” means the first ten thousand dollars (\$10,000) of minimum site assessment costs, or any lesser amount determined in accordance with 20.5.123 NMAC.

(2) “Department” means the New Mexico environment department, also known as the New Mexico department of environment.

(3) “Dielectric material” means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate storage tank systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of storage tank systems, such as tank from piping.

(4) “Director” means the secretary of the New Mexico environment department also known as the secretary of the environment or as delegated to the director of the resource protection division of the department.

(5) “Direct responsible supervisory control” means responsibility for the direction, control, or supervision of investigation and remediation activities to assure that the work is performed in accordance with appropriate industry and regulatory quality standards.

(6) “Dispenser” means equipment located

above ground that dispenses regulated substances from the storage tank system.

(7) “Dispenser system” means the dispenser and the equipment necessary to connect the dispenser to the storage tank system.

E. Terms beginning with the letter “E.”

(1) “Effectively mitigating” means that the approach taken to corrective action has contained the release and is achieving reductions in contamination levels such that the standards described in 20.5.119 and 20.5.120 NMAC will be met in a manner protective of public health, safety and welfare and the environment, within the period of time specified in the plan for remediation by monitored natural attenuation or otherwise.

(2) “EIB” means the environmental improvement board.

(3) “EIB standards” means standards set forth in 20.5.119, 20.5.120 and 20.7.10 NMAC.

(4) “Electrical equipment” means equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

(5) “Emergency generator system” means any UST or AST system that stores any regulated substance for use by emergency power generators.

(6) “Emergency repair” means a repair required by immediate danger of a release, or by an immediate threat to public health, safety and welfare, or to the environment.

(7) “Environmental improvement board” (EIB) means the board created in the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

(8) “Environmental Improvement Act” means the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

(9)

“Excavation zone” means the area containing the storage tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(10) “Existing AST system” means an AST system which is used to contain an accumulation of regulated substances or for which installation commenced on or before June 14, 2002.

Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank system, and if either:

(a) a continuous on-site physical construction or installation program has begun, or

(b) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(11) “Existing UST system” means a UST system which is used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction of the site or installation of the tank system, and if either:

(a) a continuous on-site physical construction or installation program has begun, or

(b) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(12) “Exposed

petroleum products” means petroleum that is present in the non-aqueous phase (i.e. not dissolved in water) on the surface of the ground, on surface water, or in any surface or subsurface structures such as utility corridors, basements and manholes.

(13) “Exposed hazardous substance” means a regulated substance other than petroleum that is present on the surface of the ground, on surface water, or in any surface or subsurface structures such as utility corridors, basements or manholes.

F. Terms beginning with the letter “F.”

(1) “Facility” means a property location that contains storage tanks.

(2) “Facility ID number” is a department-issued facility identification number.

(3) “Farm tank” is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. “Farm” includes fish hatcheries, range land and nurseries with growing operations.

(4) “Field-constructed tank” means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field. AST systems with a capacity of 55,000 gallons or more associated with UST systems with field-constructed tanks must comply with 20.5.101 NMAC, 20.5.102 NMAC, 20.5.117 NMAC, 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.124 NMAC.

(5) “Financial reporting year” means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

(a) a 10-K report submitted to the SEC;

(b) an annual report of tangible net worth submitted to Dun and Bradstreet; or

(c)

annual reports submitted to the energy information administration or the rural utilities service; “financial reporting year” may thus comprise a fiscal or a calendar year period.

(6) “Flow restrictor” means an overflow prevention device that decreases the flow of a regulated substance into a UST during a delivery at a preset height by decreasing the flow of vapors out of the UST.

(7) “Flow-through process tank” is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(8) “Free product” refers to a regulated substance that is present as a non-aqueous phase liquid (for example, liquid not dissolved in water).

(9) “Functionality test” means a test for automatic line leak detectors which determines whether they are operating correctly.

(10) “Fund” means the corrective action fund which was created pursuant to Section 74-6B-7 NMSA 1978, to pay or reimburse for corrective action required at leaking storage tank sites.

G. Terms beginning with the letter “G.”

(1) “Gathering lines” means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(2) “Ground Water Protection Act” means the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978.

H. Terms beginning with the letter “H.”

(1) “Hazardous substance UST system”

or “hazardous substance UST” means an underground storage tank system that contains an accumulation of hazardous substances defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act (RCRA). Hazardous substance UST includes a tank with a mixture of such substances and petroleum, but which is not a petroleum UST system.

(2) “Hazardous Waste Act” means the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978.

(3) “Heating oil” means petroleum that is No. 1; No. 2; No. 4--light; No. 4-heavy; No. 5-light; No. 5-heavy; and No. 6 technical grades of fuel oil; other residual fuel oils (including navy special fuel oil and bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(4) “Hybrid storage tank system” means a storage tank system where any combination of above ground and underground storage tank systems are connected in a manner where fuel enters one tank from the other tank under pressure or gravity flow but is not part of a siphon system.

(5) “Hydraulic lift tank” means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

I. Terms beginning with the letter “I.”

(1) “Imminent threat to public health and the environment” means a condition that creates a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the actual or potential

damages to public health and the environment.

(2) "Incurred" means billed to the owner or operator.

(3) "Initiation of containment" means the point in time at which a system designed to achieve containment is put into continuous operation.

(4) "Install" or "installation" means the work involved in placing a storage tank system or any part thereof in, on or above the ground and preparing it to be placed in service.

(5) "Installation date" means for existing storage tank systems, the date when a regulated substance was placed in the tank, or where the date is unknown, the approximate date the installation was completed. For a new installation, the date a regulated substance is first placed in each tank.

(6) "Installation of a new or replaced motor fuel dispenser system" means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the storage tank system, but shall not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the storage tank system. The equipment necessary to connect the motor fuel dispenser to the storage tank system may include check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.

(7) "Integrity test" means an evaluation process that has been independently tested and approved by a nationally recognized association or independent testing laboratory to determine, in the case of a UST, the suitability of the tank for continuous containment of a regulated substance, or, in the case of an AST, both the suitability of the tank for continuous containment of a regulated substance and the necessary hydraulic properties of the tank to contain the outward pressure of the regulated substance.

(8) "Internal inspection" means a formal inspection of an AST by an inspector authorized by the American petroleum institute or certified by the steel tank institute.

The inspection shall determine whether the AST tank bottom or shell is severely corroded and leaking, and shall include an evaluation of the tank bottom and shell thickness to see whether they meet minimum thickness requirements. The inspector shall visually examine all tanks included in the inspection and, if applicable, check for tank bottom settlement.

(9) "Interstitial monitoring" is a leak detection method which surveys the space between a storage tank system's walls and the secondary containment system for a change in steady state conditions.

(10) "Inventory controls" are techniques used to identify a loss of product that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

J. Terms beginning with the letter "J." [RESERVED]

K. Terms beginning with the letter "K." [RESERVED]

L. Terms beginning with the letter "L."

(1) "Landfarming" is the remediation of petroleum contaminated soils on or at ground surface using natural aeration and volatilization, disking and natural and enhanced bioremediation to reduce the concentrations of petroleum hydrocarbons to regulatory levels; requires a groundwater discharge permit.

(2) "Leak" means any spilling, emitting, discharging, escaping, or disposing of a regulated substance due to the failure of components of a storage tank system to contain a regulated substance as designed. A leak may or may not result in a release to the environment.

(3) "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions

brought:

(a) by EPA or a state to require corrective action or to recover the costs of corrective action;

(b) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(c) by any person to enforce the terms of a financial assurance mechanism.

(4) "Liquid" means any material that has a fluidity greater than that of 300 penetration asphalt when tested in accordance with *ASTM D 5, "Test for Penetration for Bituminous Materials"*. When not otherwise identified, the term liquid shall mean both flammable and combustible liquids.

(5) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. Such liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(6) "Loading rack" means the area around and including loading arms, pumps, meters, shutoff valves, relief valves, and other equipment used to load and unload fuel cargo tanks, trucks, tank trucks, railroad cars, cars, other distribution containers or other transport vehicles, if the loading rack services or is attached to one or more storage tank(s) regulated in 20.5 NMAC.

(7) "Local government" shall have the meaning given this term by applicable state law. The term is generally intended to include counties, municipalities, school districts, and special districts, including flood control and conservancy districts.

(8) "Lower explosive limit" means the lowest percentage of a substance in an airspace that is explosive.

(9) “LST ranking system” means the leaking storage tank ranking system, the ranking or site prioritization system developed for and modified by the department using the analytical hierarchy process to rank sites where a release from a storage tank has occurred based upon public health, safety and welfare and environmental concerns.

M. Terms beginning with the letter “M.”

(1) “Magnitude of contamination” means the maximum concentrations of contaminants of concern that resulted from a release.

(2) “Maintenance” means the normal operational upkeep to prevent a storage tank system from releasing product.

(3) “Minimum site assessment” or “MSA” means the sum total of all of the following activities:

(a) reporting, investigating and confirming a release pursuant to 20.5.118 NMAC; and

(b) determining the on-site extent, magnitude and impact of contamination by conducting investigations and reporting to the department pursuant to 20.5.119.1902 NMAC or 20.5.120.2002 NMAC (initial abatement), 20.5.119.1903 NMAC or 20.5.120.2003 NMAC (report on initial abatement), 20.5.119.1907 NMAC or 20.5.120.2007 NMAC (preliminary investigation), and 20.5.119.1909 NMAC or 20.5.120.2009 NMAC (report on the preliminary investigation).

(4) “Mining” means the process of obtaining useful minerals from the earth’s crust or from previously disposed or abandoned mining wastes, including exploration, open-cut mining and surface operation, the disposal of refuse from underground and in situ mining, mineral transportation, concentrating, milling, evaporation, leaching and other processing.

“Mining” does not mean the exploration and extraction of potash, sand, gravel, caliche, borrow dirt and quarry rock used as aggregate in construction, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipes, the development or extraction of coal, the extraction of geothermal resources, smelting, refining, cleaning, preparation, transportation or other off-site operations not conducted on permit areas or the extraction, processing or disposal of commodities, byproduct materials or wastes or other activities regulated by the federal nuclear regulatory commission.

(5) “Mobile AST” means an above ground storage tank that is not field-erected, and which is capable of changes in location.

(6) “Modification” means any change to any portion of a storage tank system that is not a repair. For purposes of 20.5.105 NMAC, the term does not include the process of relining a tank through the application of such materials as epoxy resins.

(7) “Monitored natural attenuation” means a methodology for remediation that relies upon a variety of naturally occurring chemical, physical and biological processes to achieve target concentrations in a manner that is equally as protective of public health, safety and welfare, and the environment as other methods, and that is accompanied by a program of monitoring to document the progress and results of the above-mentioned processes.

(8) “Monthly” means once per month, not to exceed 30 days.

(9) “Motor fuel” means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (for example: motor gasoline blended with alcohol).

(10) “Motor

fuel dispenser system” or “dispenser system” means a motor fuel dispenser and the equipment necessary to connect the dispenser to a storage tank system. The equipment necessary to connect the motor fuel dispenser to the storage tank may include check valves, shear valves, unburied risers of flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the piping.

N. Terms beginning with the letter “N.”

(1) “NAPL” means non-aqueous phase liquid as defined in this section.

(2) “New AST system” means an AST system for which installation has commenced after June 14, 2002. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank, and if either:

(a) a continuous on-site physical construction or installation program has begun, or

(b) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(3) “New storage tank system” means a new AST system or a new UST system.

(4) “New UST tank system” means an UST system for which installation has commenced after December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals, or permits necessary to begin physical construction at the site or installation of the tank, and if either:

(a) a continuous on-site physical construction or installation program has begun, or

(b)

the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(5) "Non-aqueous phase liquid" (NAPL) means an interstitial body of liquid oil, petroleum product or organic solvent or other organic substance, including an emulsion containing such material; in the case of liquid oil or a petroleum product, the term is synonymous with "phase separated hydrocarbon" and "free product."

(6) "Non-commercial purposes" with respect to motor fuel means not for resale.

(7) "Non-community water system" means a public water system that is not a community water system.

(8) "Normal maintenance" means an activity involving work on a storage tank system that is not a repair, replacement, or installation, which may include but is not limited to: painting, replacing fuses, or touchup. Any time an activity involves disconnecting or affecting the integrity of the piping, tank, spill or overfill systems, or work on line or tank leak detection systems, then the activity is not normal maintenance but is instead a repair.

O. Terms beginning with the letter "O."

(1) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from a storage tank. This definition is intended to assist in the understanding of 20.5.123 NMAC and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

(2) "On the premises where stored" with respect to heating oil means storage tank systems located on the same property where

the stored heating oil is used.

(3) "Operational life" is the period beginning from the time when the installation of the tank system is commenced until it is properly closed pursuant to 20.5.115 NMAC.

(4) "Operator" means any person in control of, or having responsibility for, the daily operation of a storage tank system.

(5) "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(6) "Owner" means, in the case of a storage tank in use on November 8, 1984 or brought into use after that date, any person who owns a storage tank used for storage, use, or dispensing of regulated substances; and in the case of a storage tank in use before November 8, 1984 but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use. For purposes of the registration requirements of 20.5.102 NMAC only, the term "owner" excludes any person who:

(a) had a UST taken out of operation on or before January 1, 1974;

(b) had a UST taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984; or

(c) had an AST taken out of operation on or before July 1, 2001.

(7) "Owner ID number" means a department issued owner identification number.

P. Terms beginning with the letter "P."

(1) "Permanently installed AST" means an AST or mobile AST that is on site for more than 365 consecutive days and dispensing or storing a regulated substance for distribution at any time during that period.

(2) "Person" means any individual, trust, firm, joint stock company, federal agency,

corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

(3) "Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions, including gasoline, kerosene, heating oils, and diesel fuels.

(4) "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(5) "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with storage tank systems as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(6) "Petroleum tank system," "petroleum storage tank" or "petroleum UST" means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(7) "Pipe" or "piping" means the hollow cylinder or the tubular conduit constructed of non-earthen materials that routinely contains and conveys regulated substances within a storage tank system. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the storage tank to the dispenser or other end-use equipment.

(8) "Pipeline facilities, including gathering lines," are new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under the federal Natural Gas Pipeline Safety Act of

1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App.

2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act.

(9) “Positive sampling, testing or monitoring results” refers to the results of sampling, testing or monitoring using a method described in 20.5.108 NMAC or 20.5.111 NMAC that indicate a release from a storage tank system has occurred.

(10) “Potable drinking water well” means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which may supply water for a community water system, a non-community public water system, or otherwise may supply water for human consumption (consisting of drinking, bathing, cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(11) “Potentially explosive levels of petroleum hydrocarbon vapors” means vapors which register in excess of ten percent LEL (lower explosive limit) on a combustible gas indicator properly calibrated for pentane.

(12) “Potentially harmful petroleum hydrocarbon vapors” means vapors which register a reading of five whole units above ambient concentrations total aromatic hydrocarbons in any structure in the vicinity of the release site, on a photoionization detector, flame ionization detector or an equivalent device properly calibrated to detect hydrocarbon vapors at a minimum detection limit of at least one ppm.

(13) “Product” means a regulated substance.

(14) “Product deliverer” means any person who delivers or deposits product into a storage tank system. This term includes, but is not limited to, major oil companies, jobbers, petroleum

transportation companies, brokers and other product delivery entities.

(15) “Professional engineer” is an individual licensed in New Mexico to engage in the practice of engineering under the New Mexico Engineering and Surveying Practices Act, Sections 61-23-1 through 61-23-32 NMSA 1978.

(16) “Project drawings” means schematic drawings of tanks, piping, and ancillary equipment, which need not be prepared, stamped or signed by a professional engineer.

(17) “Property damage” shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

(18) “Provider of financial assurance” means an entity that provides financial assurance to an owner or operator of a storage tank system through one of the mechanisms listed in 20.5.117.1705 through 20.5.117.1716 NMAC, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

(19) “Public water system” means a system for the provision to the public of piped water for human consumption (consisting of drinking, bathing, cooking, or other similar uses) if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such

system. A public water system is either a “community water system” or a “non-community water system.”

Q. Terms beginning with the letter “Q”.

(1) “Qualified firm” means a person, as defined in this section, qualified by the department under 20.5.122 NMAC to undertake corrective action.

(2) “Qualified tester” means an individual who has the training, testing equipment manufacturer’s certifications, and experience to test spill and overflow prevention equipment, containment sumps, interstitial and sump sensors, automatic line leak detectors, cathodic protection systems, and to conduct precision tank and line tightness testing on any above ground or underground storage tank systems. Also, the individual meets the requirements for testers in 20.5.105 NMAC and has submitted the information required in 20.5.105 NMAC to the department.

R. Terms beginning with the letter “R”.

(1) “RBSL” means risk-based screening level as used in 20.5.119 NMAC.

(2) “Receptor” means a person, plant or animal community, structure, utility, surface water, designated wellhead or source water protection area or water supply well that is or may be adversely affected by a release.

(3) “Red tag” means a tamper-resistant tag on a storage tank system’s fill pipes that clearly identifies a storage tank system as ineligible for product delivery, deposit or acceptance. The tag shall be easily visible and state that it is unlawful to deliver to, deposit into, or accept product into, the ineligible storage tank system.

(4) “Regulated substance” means:

(a) for USTs: any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, but not including any substance regulated as a hazardous waste under

Subtitle C of the federal Resource Conservation and Recovery Act, as amended; and

(b) for ASTs and USTs: petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure of 60 degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute; asphalt is not a regulated substance; the term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels (including ethanol-based motor fuels), jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(5) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of a regulated substance from a storage tank system into groundwater, surface water or soil.

(6) "Release detection" means determining whether a release of a regulated substance has occurred from a storage tank system into the environment or a leak has occurred into the interstitial area between a storage tank system and a secondary barrier around it.

(7) "Remediation" is the process of reducing the concentration of contaminants in air, water or soil to a level that poses an acceptable risk to public health, safety and welfare and the environment.

(8) "Repair" means to restore to proper operating condition any defective or damaged part of a storage tank system. Repair does not include normal maintenance. For these purposes, normal maintenance shall include but is not limited to: painting, replacing fuses, or touchup. Any time an activity involves disconnecting or affecting the integrity of the piping, tank, spill or overfill systems, or work on line or tank leak detection systems, then the activity is not normal maintenance

and is a repair.

(9) "Replace" or "replaced" means:

(a) for a storage tank or dispenser system, to remove an existing tank or dispenser system and install a new tank or dispenser; and

(b) for piping, to remove either 20 feet or more or fifty percent or more of piping, whichever is less, and install other piping, excluding flex connectors and other transitional components, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

(10) "Residential tank" is a tank located on property used primarily for dwelling purposes.

(11) "Responsible party-lead site" means a site where the owner or operator takes corrective action and applies to the fund for payment of corrective action costs, as distinct from a site where the state takes corrective action.

(12) "Return to service" means to bring a storage tank into operation after the tank has been in temporary or permanent closure.

(13) "Risk-based screening level" (RBSL) means an action level or target level for a contaminant of concern determined using default criteria set by the department and site-specific data for thickness of the contaminated zone and depth to groundwater in accordance with 20.5.119 NMAC.

(14) "Rural and remote area" means that a storage tank facility is located in an area that is more than 20 miles from another facility that sells fuel to the public and that is open year-round.

S. Terms beginning with the letter "S."

(1) "Secondary containment" or "secondarily contained" means:

(a) for USTs and ASTs: a release prevention and release detection system for a storage tank, its piping and associated ancillary equipment

that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, synthetic impervious liners. This term includes containment sumps when used for interstitial monitoring of piping.

(b) For USTs: a release prevention and release detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks.

(2) "Secretary" means the secretary of the New Mexico environment department also known as the secretary of the environment.

(3) "Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(4) "Siphon system" means two or more storage tanks where the tops of the tanks are installed at the same level, the fuel levels equalize by atmospheric pressure, and the piping connecting them is installed through penetrations on the tops of the tanks.

(5) "Site" means a place where there is or was at a previous time one or more storage tanks and may include areas contiguous to the actual location or previous location of the tanks.

(6) "Site conceptual exposure scenario" means a qualitative evaluation of exposure information for a site that identifies the relevant contaminant source, release mechanisms, media of concern, complete and incomplete exposure pathways, and receptors.

(7) "Site-specific target level" (SSTL) means

an action level or target level for a contaminant of concern determined using more site-specific data as used in 20.5.119 NMAC.

(8) “Source water” means water that could be used for domestic purposes, including but not limited to ground water, natural springs, and surface water, even if such water is not currently being used for domestic purposes.

(9) “Special enclosure” means an above or below grade AST installation that surrounds an AST or ASTs, including but not limited to pits, cellars, and basements.

(10) “Spill” means:

(a) any spill or overflow of a regulated substance that exceeds its reportable quantity under 40 CFR 302 in accordance with CERCLA;

(b) any spill or overflow of petroleum that exceeds 25 gallons or causes a sheen on surface water or reaches groundwater; or

(c) any spill or overflow of petroleum of 25 gallons or less, the cleanup of which cannot be accomplished within 24 hours.

(11) “SSTL” means site-specific target level as used in 20.5.119 NMAC.

(12) “State-lead site” means a site where the department takes corrective action using the fund because the owners and operators are unknown, unable or unwilling to take corrective action as described in 20.5.121.2102 NMAC or because the department determines that a single entity is necessary to lead the corrective action.

(13) “Storage tank” means any above ground storage tank or underground storage tank.

(14) “Storage tank fee” means fees required by Section 74-4-4.4 NMSA 1978 and Section 74-6B-9 NMSA 1978.

(15) “Storage tank system” means a storage tank and its associated ancillary equipment and containment system, if any.

(16) “Storm

water or wastewater collection system” means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur.

(17) “Substantial business relationship” means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(18) “Substantial governmental relationship” means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from a clear commonality of interest in the event of a storage tank release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(19) “Sump” means any pit or reservoir that meets the definition of tank (including troughs or trenches connected to it that serves to temporarily collect regulated substances.

(20) “Surface impoundment” is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of regulated substances and that is not an injection well.

T. Terms beginning with the letter “T”.

(1) “Tangible net worth” means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, “assets” means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(2) “Tank” is a stationary device designed to contain an accumulation of regulated substances which is constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(3) “Tank chart” means a table that converts the number of inches of liquid in the tank into the number of gallons.

(4) “Target concentrations” means any concentration of a contaminant to which a medium is required to be remediated under any provision of 20.5 NMAC protective of human health, safety and welfare, and the environment. For purposes of 20.5.120 NMAC, target concentrations as they apply to soil contamination shall be based on standards prescribed by applicable law or, if there are no applicable standards, the standard set forth in 20.6.3.10 NMAC.

(5) “Temporary closure” is the state of a storage tank system that is not receiving deliveries, has no regulated substance being transmitted through its piping, and whose owner or operator has notified the department that it is in temporary closure. Temporary closure shall not exceed 12 months unless the owner or operator receives an extension from the department and meets the requirements of 20.5.115 NMAC.

(6) “Termination” under Subsections A and B of 20.5.117.1757 NMAC means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

(7) “Tester” means an individual who has the training, testing equipment manufacturer’s certifications, and experience to test spill and overflow prevention equipment, containment sumps, interstitial and sump sensors, automatic line leak detectors, cathodic protection systems, and to conduct precision tank and line tightness testing on any above ground or underground storage tank systems.

(8) “Third party” means an independent entity that is not affiliated with the owner and operator of a storage tank system.

(9) “Third party certified” means a process whereby release detection equipment or a method of release detection has been evaluated by an independent third-party testing laboratory which has published a report stating the equipment or method meets the claims made by the manufacturer.

(10) “Tightness testing” means a procedure for testing the ability of a storage tank system to prevent an inadvertent release of any stored substance into the environment (or, in the case of an UST system, intrusion of groundwater into a storage tank system).

(11) “Training program” means any program that meets the requirements of 20.5.104 NMAC and provides information to and evaluates the knowledge of a class A, class B, or class C operator through testing, practical demonstration, or another approach acceptable to the department regarding requirements for storage tank systems.

(12) “Trap door” means a device installed on the fill riser above the connection of remote fill line on a UST system that is designed to prevent a regulated substance from escaping the fill riser in the event of an overflow, and it allows for the manual gauging of the tank through this riser.

U. Terms beginning with the letter “U”.

(1) “Under-dispenser containment” or “UDC” means containment underneath a dispenser system designed to prevent

leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater.

(2) “Underground area” means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

(3) “Underground release” means any below ground release.

(4) “Underground storage tank” or “UST” means a single tank or combination of tanks, including pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. A compartment tank with combined total capacity greater than 110 gallons is a UST and for purposes of these regulations is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. The term does not include any:

(a) farm, ranch or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) septic tank;

(c) pipeline facility, including gathering lines which are regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act;

(d) surface impoundment, pit, pond or lagoon;

(e) storm water or wastewater collection system;

(f) flow-through process tank;

(g) liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

(h) storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;

(i) tank used for storing heating oil for consumptive use on the premises where stored;

(j) tank exempted by rule of the EIB after finding that the type of tank is adequately regulated under another federal or state law; or

(k) pipes connected to any tank exempted by Subparagraphs (a) through (j) of this paragraph.

(5) “Unmanned facility” means a storage tank system without a sales office, store or other business establishment associated with it. Examples of unmanned facilities include, but are not limited to, a card-lock fueling station with no attendant and a tank serving an emergency generator at a utility transfer station.

(6) “Unsaturated zone” is the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil and containing air or gases generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation (i.e., the water table).

(7) “Upgrade” means the addition, modification, or retrofit of some systems such as but not limited to cathodic protection, lining, or spill and overflow controls to improve the ability of an underground storage tank system to prevent the release of product.

(8) “USTR” means the version of the environmental improvement board’s underground storage tank regulations

in effect prior to adoption of the standard format in the New Mexico Administrative Code in 1995.

(9) "UST system" means an underground storage tank and its associated ancillary equipment and containment system, if any.

V. Terms beginning with the letter "V."

(1) "Vault" means a liquid-tight structure that completely surrounds a tank that is above, below or partially above or below the ground surface.

W. Terms beginning with the letter "W."

(1) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent of wastewater through physical, chemical, or biological methods.

(2) "Workplan" means a written plan for corrective action, including, but not limited to, a scope of work, schedule for implementation, and description of qualifications of persons who will perform the work.

(3) "WQCC" means the New Mexico water quality control commission.

(4) "WQCC standards" means standards set forth in 20.6.4 NMAC, standards for interstate and intrastate streams, and 20.6.2 NMAC, ground and surface water protection.

X. Terms beginning with the letter "X." [RESERVED]

Y. Terms beginning with the letter "Y." [RESERVED]

Z. Terms beginning with the letter "Z." [RESERVED]
[20.5.101.7 NMAC - N, 07/24/2018]

20.5.101.8 to 20.5.101.99
[RESERVED]

20.5.101.100 SAVINGS
CLAUSE: This rule shall not affect any administrative or judicial enforcement action pending on the effective date of 20.5.101 through 20.5.125 NMAC.
[20.5.101.100 NMAC - N, 07/24/2018]

20.5.101.101 COMPLIANCE WITH OTHER REGULATIONS: Compliance with 20.5 NMAC does not relieve a person of the obligation to comply with other applicable state and federal regulations.

[20.5.101.101 NMAC - N, 07/24/2018]

20.5.101.102 CONSTRUCTION: The petroleum storage tank regulations, 20.5 NMAC, shall be liberally construed to effectuate the purposes of the Hazardous Waste Act and the Ground Water Protection Act.

[20.5.101.102 NMAC - N, 07/24/2018]

20.5.101.103 SEVERABILITY: If any part, section or application of 20.5 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.5.101.103 NMAC - N, 07/24/2018]

HISTORY OF 20.5.101 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 3/15/88; EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 9/12/88; EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 2/14/89; EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 8/4/89; EIB/USTR 11, Underground Storage Tank Regulations - Part XI - Miscellaneous, filed 9/12/88.

History of Repealed Material:
20 NMAC 5.1, Underground Storage Tanks - General Provisions (filed 10/6/95), repealed 2/2/00;
20.5.1 NMAC, Petroleum Storage Tank Regulations - General Provisions (filed 12/30/99), repealed 6/14/02;
20.5.1 NMAC, Petroleum Storage

Tank Regulations - General Provisions, (filed 4/30/02), repealed 8/15/03.

20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, (filed 7/16/03), repealed 4/4/08.

20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, (filed 3/5/08), repealed 6/15/09.

20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, (filed 6/15/09), repealed 7/24/18.

Other History:

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, filed 8/4/89 and EIB/USTR 11, Underground Storage Tank Regulations - Part XI - Miscellaneous (filed 9/12/88) both renumbered, reformatted and replaced by 20 NMAC 5.1, Underground Storage Tanks - General Provisions, effective 11/5/95;

20 NMAC 5.1, Underground Storage Tanks - General Provisions (filed 10/6/95), was replaced by 20 NMAC 5.1, Underground Storage Tanks -

General Provisions, effective 2/2/00;

20 NMAC 5.1, Underground Storage Tanks - General Provisions (filed 12/30/99), was replaced by 20.5.1 NMAC, Petroleum Storage Tanks -

General Provisions, effective 6/14/02
20.5.1 NMAC, Petroleum Storage Tanks - General Provisions (filed 4/30/02), was replaced by 20.5.1

NMAC, Petroleum Storage Tanks - General Provisions, effective 8/15/03.

20.5.1 NMAC, Petroleum Storage Tanks - General Provisions (filed 7/16/03), replaced by 20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, effective 4/4/08.

20.5.1 NMAC, Petroleum Storage Tanks - General Provisions (filed 3/5/08), replaced by 20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, effective 6/15/09.

20.5.1 NMAC, Petroleum Storage Tanks - General Provisions (filed 3/5/08), replaced by 20.5.101 NMAC, Petroleum Storage Tanks - General Provisions, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 102 REGISTRATION
OF TANKS**

20.5.102.1 ISSUING

AGENCY: New Mexico
Environmental Improvement Board.
[20.5.102.1 NMAC - N, 07/24/2018]

20.5.102.2 SCOPE: This part applies to any owner and operator of a storage tank as provided in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice, reporting and payment requirements; however, both parties are liable in the event of noncompliance.
[20.5.102.2 NMAC - N, 07/24/2018]

20.5.102.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.
[20.5.102.3 NMAC - N, 07/24/2018]

20.5.102.4 DURATION:

Permanent.
[20.5.102.4 NMAC - N, 07/24/2018]

20.5.102.5 EFFECTIVE

DATE: July 24, 2018, unless a later

date is indicated in the bracketed history note at the end of a section.
[20.5.102.5 NMAC - N, 07/24/2018]

20.5.102.6 OBJECTIVE:

The purpose of this part is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.
[20.5.102.6 NMAC - N, 07/24/2018]

20.5.102.7 DEFINITIONS:

The definitions in 20.5.101 NMAC apply to this part.
[20.5.102.7 NMAC - N, 07/24/2018]

**20.5.102.8 TO 20.5.102.199
[RESERVED]**

**20.5.102.200 EXISTING
TANKS:**

A. The owner of any underground storage tank, as those terms are defined in 20.5.101 NMAC, must have registered such tank or tanks with the petroleum storage tank bureau of the department within three months after April 14, 1988, the effective date of this part as first adopted, except that any owner who has filed the form of notice entitled "notification for underground storage tanks," prescribed by the United States environmental protection agency and described in 40 CFR 280 Appendix I (EPA form 7530-1), is not required to register a tank for which a notice has been filed, provided that the information as stated therein is still current.

B. The owner of any above ground storage tank, as those terms are defined in 20.5.101 NMAC, must have registered such tank or tanks with the petroleum storage tank bureau of the department no later than June 14, 2002.

C. The owner of any storage tank emergency generator system must have registered such tank with the petroleum storage tank bureau of the department no later than June 15, 2012.

D. Registration becomes effective upon receipt of the first year's annual fee described in 20.5.103 NMAC. Registration shall

be renewed annually by payment of the annual fee until the permanent closure of the tank pursuant to 20.5.115 NMAC.

E. If owners and operators do not have a current and valid registration certificate because of the failure to pay tank fees in accordance with 20.5.102.207 NMAC, the storage tank system shall not be operated and owners and operators shall comply with the temporary closure requirements of 20.5.115 NMAC or shall immediately permanently close the storage tank system in accordance with 20.5.115.1502 NMAC.
[20.5.102.200 NMAC - N, 07/24/2018]

**20.5.102.201 TRANSFER OF
OWNERSHIP:**

A. No purported transfer of any storage tank system shall be effective to create, alter or extinguish any right or responsibility of any person subject to this part, unless the following transfer requirements are met.

(1) Prior to any transfer of ownership, control or possession, whether by lease, conveyance or otherwise, of a property with a regulated storage tank system, the transferor shall notify the department and shall provide the name, address and phone number of the transferee, as well as the date and type of transfer (sale or lease, for example). The transferor shall also notify the transferee, prior to the transfer, of the existence of the storage tank system, of the transferee's registration obligations under this part, and of these rules.

(2) Upon receipt of such notification, the transferee shall re-register the tank with the department within 30 days of transfer of ownership, and shall provide all information required for registration in 20.5.102.206 NMAC. The transferee also shall have the duty to inquire into all of the provisions and requirements of this part.

(3) A transferor shall pay the tank fees for storage tank systems on the

transferred property for the fiscal year of the transfer. A transferee shall pay the tank fees for storage tank systems on the transferred property starting the first July 1 after the transfer.

B. Nothing in this section or in this part shall be construed to relieve any person of responsibility or liability for any act or omission which occurred while that person owned, controlled or was in possession of the storage tank system. [20.5.102.201 NMAC - N, 07/24/2018]

20.5.102.202 NEW STORAGE TANK SYSTEMS: The owner shall notify the department in writing at least 30 days before any new above ground or underground storage tank system is installed, and shall register any new tank or storage tank system with the department within 60 days of placing a regulated substance in the tank, unless the owner applies for an extension in writing and an extension is granted in writing by the department. Annual registration certificates required for operation will be issued in accordance with 20.5.102.207 NMAC. [20.5.102.202 NMAC - N, 07/24/2018]

20.5.102.203 SUBSTANTIALLY MODIFIED STORAGE TANK SYSTEMS: Except as provided in 20.5.102.205 NMAC below, when an existing storage tank system is substantially modified or replaced, the owner shall notify the department in writing of such modification or replacement, at least 30 days prior to the modification or replacement. Emergency repairs or replacements made pursuant to 20.5.102.205 NMAC are exempt from the notification requirements of this section. [20.5.102.203 NMAC - N, 07/24/2018]

20.5.102.204 NOTIFICATION OF SPILL OR RELEASE: Notice of any known or suspected release from a storage tank system, any spill or any other emergency situation shall be given to the department in

accordance with 20.5.118 NMAC. [20.5.102.204 NMAC - N, 07/24/2018]

20.5.102.205 EMERGENCY REPAIRS AND TANK REPLACEMENT: The owner or operator may make immediate repairs or replacement of a storage tank system in the event an emergency situation presents a threat to the public health, provided the owner or operator gives notice to the department as set forth in 20.5.102.204 NMAC and complies with the requirements of 20.5.107 NMAC for UST systems and 20.5.110 NMAC for AST systems. [20.5.102.205 NMAC - N, 07/24/2018]

20.5.102.206 REGISTRATION:
A. Required information. An owner or operator shall register all storage tanks unless EPA form 7530-1 entitled “notification for underground storage tanks” has been submitted to the department and all information contained thereon is still accurate. The registration shall contain at a minimum the following for each location with tanks:

- (1) facility name and address, including county, zip code and telephone number, and whether the tanks are located on Indian lands;
- (2) the department issued owner ID number and facility ID number for existing facilities;
- (3) whether the facility is currently listed as a leaking petroleum storage tank site;
- (4) storage tank system owner’s name and address, including county, zip code and telephone number;
- (5) property owner’s name and address, including county, zip code and telephone number;
- (6) storage tank system operator’s name and address, including county, zip code and telephone number (if operator is different from owner);
- (7) facility

contact person, job title and phone number;

(8) type of facility: government (federal, state, county, municipality or other); individual; retail or non-retail (petroleum producer, petroleum refiner, school district, construction company, manufacturer);

(9) whether a suspected or confirmed release as described in 20.5.118 NMAC has been reported at the facility to the bureau;

(10) type of tank (list all that apply): AST, UST, steel double-wall, steel with cathodic protection, horizontal, vertical, compartment, with secondary containment, convault, field erected, shop built, vaulted, fiberglass, fiberglass double wall;

(11) for each tank, (list all that apply): type of internal protection (cathodic protection, interior lining or other), type of external protection (asphalted, painted, epoxy coated, fiberglass reinforced plastic, cathodically protected or other), and type of corrosion protection (impressed current, sacrificial anode, internal lining or other);

(12) type of piping (list all that apply): bare or galvanized steel, coated steel, fiberglass reinforced plastic, pressurized, suction, cathodically protected or unknown;

(13) products stored (list all that apply): diesel, unleaded or leaded gasoline, alcohol-enriched gasoline, used oil, lubricating oil, heating oil, kerosene, aviation gas, jet fuel, hazardous substance, other or unknown;

(14) use of tank (list all that apply): bulk fuel storage, retail fuel sales, aviation, fleet fuel supply, emergency generator, on-site heating, other (please specify);

(15) method of release detection for each tank: visual inspection, tank tightness testing with inventory control, automatic tank gauging, vapor monitoring, groundwater monitoring, interstitial monitoring, statistical inventory

reconciliation, secondary containment or other (please specify);

(16) method of release detection for piping: visual inspection, secondary containment, vapor monitoring, interstitial monitoring, automatic line leak detectors, line tightness testing or other (please specify);

(17) installation date of each tank;

(18) status of each tank (list all that apply): new installation, upgraded or modified, currently in service or out of service less than 12 months, change in service and for tanks out of use: estimated date last used, estimated quantity of substance remaining in tank in gallons, date tank filled with solid material (if applicable), and date tank removed (if applicable);

(19) certifications required in 20.5.106 NMAC, 20.5.107 NMAC, 20.5.109 NMAC, 20.5.110 NMAC, and 20.5.105 NMAC;

(20) whether any part of the storage tank system is within 1,000 feet of any water supply well;

(21) a description of the method and provider of financial responsibility meeting the requirements of 20.5.117 NMAC;

(22) a description of the spill and overfill prevention systems for each tank (product level sensor/alarm, automatic tank fill shut-off and type, spill catchment basin, less than 25 gallons at a time transferred to tank, none, or other); and

(23) the name of the class A or B operator, if available. If the name of the class A or B operator is not available at the time of registration, this information shall be provided within 60 days of placing the storage tank system in service.

B. Signature required. A registration submitted by a corporation shall be signed by a principal executive officer of at least the level of vice president or a duly authorized agent of the

corporation with authority to represent the corporation in these matters. A registration submitted by a partnership or a sole proprietorship shall be signed by a general partner or proprietor. A registration submitted by a municipal, state or other public facility shall be signed by either a principal executive officer, ranking elected official or other duly authorized employee.

C. Registrations shall be sent or delivered to the petroleum storage tank bureau.

[20.5.102.206 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for registration. The form is available on the Petroleum Storage Tank Bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.102.207 REGISTRATION CERTIFICATE:

A. No person shall operate a storage tank system without a current and valid registration certificate.

(1) The operator of any storage tank system shall display a current and valid registration certificate on the premises of the storage tank system at all times.

(2) Upon submittal to the department of a complete registration application or EPA form 7530-1 and payment of the annual fee, the department shall issue an initial registration certificate. An initial registration certificate shall expire on the next succeeding June 30, regardless of its date of issuance.

(3) After issuance of the initial registration certificate, except as provided in Paragraph (5) of this subsection, the department shall issue a renewed registration certificate upon payment of the annual fee on or before July 1 of each year. A renewed registration certificate shall expire on June 30 of each year.

(4) After receiving a registration form for a

transfer as provided in Paragraph (2) of Subsection A of 20.5.102.201 NMAC, the department shall issue a registration certificate within 30 days for the transferee if the annual fees for the current fiscal year have been paid as required in 20.5.102.201 NMAC.

(5) When fees, including late fees, for any of an owner's tanks are delinquent as of June 30 of any year, no registration certificate for any of that owner's tanks shall be renewed until:

(a) all past due annual fees and late fees for all of the owner's tanks have been paid; or

(b) the department and the owner or operator have agreed to a schedule for payment, provided any renewed certificate issued to an owner or operator who has agreed to such a schedule shall be valid only so long as the owner or operator continues to make payments in accordance with the payment schedule.

B. In the event any information provided on the registration form or EPA form 7530-1 changes or is no longer accurate, the owner or operator shall report the change within 30 days to the department.

[20.5.102.207 NMAC - N, 07/24/2018]

20.5.102.208 REQUIREMENT FOR A CORRECT MAILING ADDRESS:

All registration forms, inspection reports, correspondence, or other documents sent by owners or operators to the department shall include the correct mailing address of the owner or operator, and the owner and operator shall advise the department, in writing, within seven days of any change in mailing address.

[20.5.102.208 NMAC - N, 07/24/2018]

HISTORY OF 20.5.102 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB/USTR-2, Underground Storage Tank Regulations - Part II - Registration of Tanks, filed 3/15/98; EIB/USTR-2, Underground Storage Tank Regulations - Part II - Registration of Tanks, filed 9/12/88; EIB/USTR-2, Underground Storage Tank Regulations - Part II - Registration of Tanks, filed 8/4/89.

History of Repealed Material:

20 NMAC 5.2, Petroleum Storage Tank Regulations, Registration of Tanks (filed 02/27/97) repealed 6/14/02.
20.5.2 NMAC, Petroleum Storage Tanks - Registration of Tanks (filed 4/30/02) repealed 4/4/08.
20.5.2 NMAC, Petroleum Storage Tanks - Registration of Tanks (filed 04/04/08), repealed 7/24/18.

Other History:

EIB/USTR-2, Underground Storage Tank Regulations - Part II - Registration of Tanks (filed 8/4/89) renumbered, reformatted and replaced by 20 NMAC 5.2, Underground Storage Tanks - Registration of Tanks, effective 11/5/95.
20 NMAC 5.2, Underground Storage Tanks - Registration of Tanks (filed 10/6/95) renumbered and replaced by 20 NMAC 5.2, Underground Storage Tanks - Registration of Tanks, effective 4/1/97.
20 NMAC 5.2, Underground Storage Tanks - Registration of Tanks (filed (2/27/97) renumbered, reformatted and replaced by 20.5.2 NMAC, Petroleum Storage Tanks - Registration of Tanks, effective 6/14/02.
20.5.2 NMAC, Petroleum Storage Tanks - Registration of Tanks (filed 4/30/02) replaced by 20.5.2 NMAC, Petroleum Storage Tanks - Registration of Tanks, effective 4/4/08.
20.5.2 NMAC, Petroleum Storage Tanks, Registration of Tanks (filed 4/4/08), was renumbered, reformatted, and replaced by 20.5.102 NMAC, Petroleum Storage Tanks, Registration of Tanks, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 103 ANNUAL FEE**

**20.5.103.1 ISSUING
AGENCY:** New Mexico
Environmental Improvement Board.
[20.5.103.1 NMAC - N, 07/24/2018]

20.5.103.2 SCOPE: This part applies to any owner and operator of a storage tank as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirement of this part, including any notice, reporting and payment requirements; however, both parties are liable in the event of noncompliance.
[20.5.103.2 NMAC - N, 07/24/2018]

**20.5.103.3 STATUTORY
AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; provisions of the Ground Water Protection Act, 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-16 NMSA 1978.
[20.5.103.3 NMAC - N, 07/24/2018]

20.5.103.4 DURATION:
Permanent.
[20.5.103.4 NMAC - N, 07/24/2018]

**20.5.103.5 EFFECTIVE
DATE:** July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.103.5 NMAC - N, 07/24/2018]

20.5.103.6 OBJECTIVE:
The purpose of this part is to regulate storage tank systems in order to protect the public health, safety and

welfare and the environment of the state, and to interpret, implement and enforce the provisions of the Hazardous Waste Act relating to storage tank systems.
[20.5.103.6 NMAC - N, 07/24/2018]

20.5.103.7 DEFINITIONS:
The definitions in 20.5.101 NMAC apply to this part.
[20.5.103.7 NMAC - N, 07/24/2018]

**20.5.103.8 -20.5.103.299
[RESERVED]**

**20.5.103.300 PAYMENT OF
FEE:**

A. The owner or operator shall pay an annual per tank fee to the department on July 1 for each current fiscal year (July 1 through June 30) or portion of a year that a tank is in use. A storage tank shall be deemed "in use" until notice is received by the department that the storage tank has been permanently closed in a manner acceptable to the department.

B. Schedule for payment.
(1) For USTs, the owner or operator shall pay the annual fee:

(a) for a UST in use on June 1, 1988, for calendar year 1988, the fee was due on June 1, 1988;

(b) for the period from January 1, 1989 through June 30, 1990, the fee was due on May 1, 1989;

(c) for each subsequent fiscal year (July 1 to June 30) on the July 1 that is the first day of each fiscal year;

(d) for a new UST, within 60 days after a regulated substance has been placed in the UST.

(2) For ASTs, the owner or operator shall pay the annual fee:

(a) for an AST in use on July 1, 2002, for fiscal year 2003, the fee was due on September 14, 2002; or within 30 days after the AST was placed in use for any AST installed after September

14, 2002;

(b)

for each subsequent fiscal year (July 1 to June 30) on the July 1 that is the first day of each fiscal year;

(c)

for a new AST, within 60 days after a regulated substance has been placed in the AST.

C. The department shall waive the annual tank fee for the current fiscal year for a storage tank system permanently closed in accordance with 20.5.115 NMAC on or before July 31.

D. When there is a transfer of ownership, control or possession, whether by lease, conveyance or otherwise, of a property with a registered storage tank system, the transferor shall pay the tank fees for storage tank systems on the transferred property for the fiscal year of the transfer. The transferee shall pay the tank fees for storage tank systems on the transferred property starting the first July 1 after any transfer. In addition, both parties shall comply with 20.5.102.201 NMAC. [20.5.103.300 NMAC - N, 07/24/2018]

20.5.103.301 AMOUNT OF FEE:

A. The annual fee for all underground storage tanks shall be:

(1) \$28.00 per UST in calendar year 1988;

(2) \$75.00 per UST in calendar year 1989; and

(3) for subsequent years, \$100 per UST as established by Section 74-6B-9 NMSA 1978 and Section 74-4-4.4 NMSA 1978.

B. The annual fee for all above ground storage tanks shall be \$100 per AST as established by Section 74-6B-9 NMSA 1978 and Section 74-4-4.4 NMSA 1978, beginning July 1, 2002. [20.5.103.301 NMAC - N, 07/24/2018]

20.5.103.302 TIMELINESS AND LATE FEES:

A. Due date. A tank

owner and operator become liable for a fee as soon as the event generating the fee occurs, such as a due date.

The fact that the owner has not registered a tank is not material to the owner's and operator's liability for payment of a fee.

B. Late fee. In the event the annual fee is not paid when due, the department shall impose a late fee of \$25.00 or twenty-five percent of the unpaid balance, whichever is greater, which shall accumulate on the entire unpaid balance until all annual fees and all accrued late fees are paid. The department may waive the late fees if payment is made within 15 days of the due date.

C. Determination of timeliness.

(1) Fees and late fees are timely if the postmark on the envelope made by the United States postal service bears the date on or before the date the payment is due. The date affixed on an envelope by a postage meter stamp will be considered the postmark date if it is not superseded by a postmark made by the United States postal service.

(2) Illegible postmark. If the postmark on the envelope is not legible and the department receives the contents by the second business day following the due date, the payment will be deemed timely. If the department receives the contents after the second business day following the due date, the owner or operator who is liable for the fees has the burden of proving the time when the postmark was made.

(3) If an envelope is improperly addressed and is returned to the sender by the post office, there has been no timely mailing within the meaning of these rules. The postmark date on the improperly addressed envelope will not be deemed the date of receipt by the department.

(4) If the payment is sent or delivered to the department by any means other than by mailing with the United States postal service, it must be received by the department on or before the

payment due date. Received by the department means received at the department or bureau during the department's normal business hours.

D. Saturday, Sunday or holiday due date.

(1) If a payment due date falls on a Saturday, Sunday or a state of New Mexico or national holiday, the payment shall be considered timely if postmarked on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(2) Example: The due date for payment of annual fees is July 1. If July 1 is a Saturday, the due date for payment of annual fees is Monday July 3. In this example, the department will consider any payment postmarked on July 3 to be timely.

[20.5.103.302 NMAC - N, 07/24/2018]

20.5.103.303 DESIGNATION OF FEES: All fees described in this part shall be deposited in the storage tank fund.

[20.5.103.303 NMAC - N, 07/24/2018]

HISTORY OF 20.5.103 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives: EIB/USTR-3, Underground Storage Tank Regulations - Part III - Annual Fee, 3/15/1988; EIB/USTR-3, Underground Storage Tank Regulations - Part III - Annual Fee, 2/14/1989.

History of Repealed Material:

20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee (filed 02/27/97) repealed 06/14/02.
20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee (filed 04/30/02) repealed 4/4/2008.
20.5.3 NMAC, Petroleum Storage Tanks, Payment of Fee (filed 4/4/08) repealed 7/24/2018.

Other History:

EIB/USTR-3, Underground Storage

Tank Regulations - Part III - Annual Fee (filed 2/14/89) renumbered, reformatted, amended and replaced by 20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee, effective 11/05/1995.

20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee (filed 10/06/95) replaced by 20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee, effective 04/01/1997.

20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee (filed 02/27/1997) renumbered, reformatted, and replaced by 20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee, effective 06/14/2002.

20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee (filed 04/30/2002) replaced by 20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee, effective 4/4/1908.

20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee (filed 04/4/2008) was renumbered, reformatted, and replaced by 20.5.103 NMAC, Petroleum Storage Tanks, Annual Fee, effective 7/24/2018.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 104 OPERATOR
TRAINING**

20.5.104.1 ISSUING

AGENCY: New Mexico Environmental Improvement Board.
[20.5.104.1 NMAC - N, 07/24/2018]

20.5.104.2 SCOPE: This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirement of this part, including any notice, reporting, designation of certified operators,

and payment requirements; however, both parties are liable in the event of noncompliance.

[20.5.104.2 NMAC - N, 07/24/2018]

20.5.104.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.104.3 NMAC - N, 07/24/2018]

20.5.104.4 DURATION:

Permanent.

[20.5.104.4 NMAC - N, 07/24/2018]

20.5.104.5 EFFECTIVE

DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.104.5 NMAC - N, 07/24/2018]

20.5.104.6 OBJECTIVE:

The purpose of this part is to ensure that operators of regulated storage tanks are effectively trained to manage and prevent environmental and public health emergencies and other situations requiring on-site response, in order to protect public health, safety and welfare and the environment of the state.

[20.5.104.6 NMAC - N, 07/24/2018]

20.5.104.7 DEFINITIONS:

The definitions in 20.5.101 NMAC apply to this part. The terms operator and certified operator as used in this part are different terms, as defined in 20.5.101.7 NMAC.

[20.5.104.7 NMAC - N, 07/24/2018]

20.5.104.8 TO 20.5.104.399

[RESERVED]

20.5.104.400 CLASSES OF

OPERATORS: There shall be three classes of operators identified as class A, class B, and class C.

A. Designation.
Owners and operators shall identify

and designate, for each storage tank system or group of storage tank systems at a facility, at least one named individual for each class of operator and provide the department the name(s) and certificate number(s) of the designated class A and B operator in writing within 30 days of a change in the designated operator.

(1) Owners
and operators may designate different individuals for each class of operator, or one individual for more than one of the operator classes.

(2) Any
individual designated for more than one operator class shall be trained and certified for each class of operator.

B. Training. All individuals designated as a class A, B or C operator shall, at a minimum, be trained and certified according to these regulations by the applicable deadlines in this part. Class A and B operators shall receive department approved training that applies to both AST systems and UST systems.

[20.5.104.400 NMAC - N, 07/24/2018]

20.5.104.401 CLASS A

OPERATOR: A class A operator has primary responsibility to operate and maintain the storage tank system. The class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

A. General
requirements. The class A operator focuses on the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the storage tank system (20.5 NMAC). For example, the class A operator ensures that appropriate individuals:

- (1)** properly operate and maintain the storage tank system;
- (2)** maintain appropriate records;
- (3)** are trained to operate and maintain the storage tank system and keep records;
- (4)** properly

respond to emergencies caused by releases or spills from storage tank systems at the facility; and

(5) make financial responsibility documents available to the department as required.

B. Minimum training requirements. At a minimum, the class A operator shall be trained in:

(1) a general knowledge of storage tank system requirements so he can make informed decisions regarding compliance and ensure appropriate individuals are fulfilling operation, maintenance, and recordkeeping requirements and standards of 20.5 NMAC regarding:

- (a) spill prevention;
 - (b) overfill protection;
 - (c) release detection;
 - (d) corrosion protection;
 - (e) emergency response; and
 - (f) product compatibility;
- (2) financial responsibility documentation requirements;
- (3) notification requirements;
- (4) release and suspected release reporting requirements;
- (5) temporary and permanent closure requirements; and
- (6) operator training requirements.

[20.5.104.401 NMAC - N, 07/24/2018]

20.5.104.402 CLASS B

OPERATOR: A class B operator implements applicable storage tank regulatory requirements and standards (20.5 NMAC) in the field. This individual implements the day-to-day aspects of operating, maintaining, and recordkeeping for storage tanks at one or more facilities.

A. General requirements. The class B operator

monitors, maintains and ensures:

(1) release detection method, recordkeeping and reporting requirements are met;

(2) release prevention equipment, recordkeeping and reporting requirements are met;

(3) all relevant equipment complies with performance standards; and

(4) appropriate individuals are trained to properly respond to emergencies caused by releases or spills from storage tank systems at the facility.

B. Minimum training requirements. Compared with training for the class A operator, training for the class B operator shall provide a more in-depth understanding of operation and maintenance aspects, but may cover a more narrow breadth of applicable regulatory requirements. At a minimum, class B operator training shall include:

- (1) components of storage tank systems;
- (2) materials of storage tank system components;
- (3) methods of release detection and release prevention applied to storage tank system components;
- (4) operation and maintenance requirements of 20.5 NMAC that apply to storage tank systems and include:
 - (a) spill prevention;
 - (b) overfill protection;
 - (c) release detection;
 - (d) corrosion protection;
 - (e) emergency response; and
 - (f) product compatibility;
- (5) reporting and recordkeeping requirements; and
- (6) class C operator training requirements.

[20.5.104.402 NMAC - N, 07/24/2018]

20.5.104.403 CLASS C

OPERATOR: A class C operator

is an employee and is, generally, the first line of response to events indicating emergency conditions. This individual is responsible for responding to alarms or other indications of emergencies caused by spills or releases from storage tank systems. This individual notifies the class B or class A operator and appropriate emergency responders when necessary. Not all employees of a facility are necessarily class C operators.

A. General requirements. The class C operator:

- (1) controls or monitors the dispensing or sale of regulated substances; and
- (2) is responsible for initial response to alarms or releases.

B. Minimum training requirements. At a minimum, the class C operator shall be trained to take action in response to emergencies (such as situations posing an immediate danger or threat to the public or to the environment and that require immediate action) and alarms potentially caused by spills or releases from a storage tank system.

C. Training elements for class C.

- (1) Trained class A or class B operators shall:
 - (a) provide training to class C operators on emergency response procedures and on contacts for alarms potentially caused by spills or releases;
 - (b) provide simple written instructions on these procedures and contacts; and
 - (c) post signage with these procedures and contacts in prominent areas of the storage tank facility that are easily visible to any person dispensing a regulated substance.
- (2)

For purposes of this subsection, emergency response procedures shall include but are not limited to:

- (a) procedures for overfill protection during delivery of regulated substances;
- (b)

operation of the emergency shut off system and alarm response;
 (c) release reporting; and
 (d) any site-specific emergency procedures.
 [20.5.104.403 NMAC - N, 07/24/2018]

20.5.104.404 TRAINING AND CERTIFICATION DEADLINES AND SCHEDULES:

A. Owners and operators of storage tank systems shall post at each facility owned a list of designated and certified class A and B operators and provide the department the name(s) and certificate number(s) of the designated class A and B operator(s) in writing within 30 days of a change in the designated operator.

B. When requested and at any inspection conducted by the department, owners and operators shall provide to the department a list of designated certified class A and B operators for each facility owned.

C. Owners shall maintain documentation identifying designated and certified class C operators, with proof of training, at each facility.

D. All designated certified class A, B and C operators shall be trained and possess a current certificate issued by a trainer approved pursuant to this part.

E. New operators shall be trained and certified within the following timeframes:

(1) Class A and class B operators shall be trained and certified within 60 days of assuming full operation and maintenance responsibilities of a storage tank system. Owners and operators in rural and remote areas of the state may apply in writing for a 60-day deferral of this requirement. To apply for this deferral, owners and operators must demonstrate to the department that they are located in a rural and remote area, as defined in 20.5.101.7 NMAC.

(2) Class C operators shall be trained

before assuming responsibility for responding to emergencies and before dispensing a regulated substance.

F. Owners and operators shall provide the department the name(s) and certificate number(s) of the designated class A and B operator(s) within 30 days of when they assume full operation and maintenance responsibilities of a storage tank system.
 [20.5.104.404 NMAC - N, 07/24/2018]

20.5.104.405 OPERATOR PRESENT:

Owners and operators shall ensure that every facility has either a class A, class B, or class C operator on-site whenever it is open for business and dispensing any regulated substance, except:

A. pursuant to Paragraph 1 of Subsection E of 20.5.104.404 NMAC;

B. at un-manned facilities, which shall conspicuously post signage required in Paragraph 1 of Subsection C of 20.5.104.403 NMAC, and shall either:

(1) be visited by a class A or B operator every week; or

(2) have a remote monitoring system that:

(a) meets the requirements for UST systems in 20.5.108 NMAC and for AST systems in 20.5.111 NMAC;

(b) will automatically shut off the delivery or transfer of regulated substances if a suspected release is detected; and

(c) is visited monthly by a class A or B operator;

C. at emergency generator systems, which shall comply with the requirements of Subsection B above, unless an owner or operator requests an alternate method and such request is approved by the department.

[20.5.104.405 NMAC - N, 07/24/2018]

20.5.104.406 RE-TRAINING AND RE-CERTIFICATION:

A. Class A and B operators shall be re-certified every five years, in the same manner as original training and certification required in this part. It is the responsibility of owners, operators and certified operators to track certification dates and expiration, and to ensure that a certified operator as required by this part is designated and on-site for every storage tank system by the deadlines in this part and as required in this part. Owners and operators shall provide the department with the certificate number and expiration date of their designated class A and B operators upon their certification.

B. In addition to the requirements of Subsection A, if the department finds that a storage tank system is out of compliance, the class A and class B operator shall be re-trained within 60 days unless they meet the requirements in Subsection C of this section. The class A and B operator may select training specific only to the area of non-compliance (if available) or attend a training program that includes all training elements required by this part. Owners and operators shall provide the department with verification of department approved re-training. At a minimum, a storage tank system is out of compliance for purposes of this section if the system is in violation of:

(1) release detection requirements in 20.5 NMAC; or

(2) release prevention requirements (spill, overfill, or corrosion prevention) requirements in 20.5 NMAC.

C. An owner may elect to certify class A and B operators annually for a storage tank system. Class A and B operators that are certified annually need not re-train as required in Subsection B of this section if the department finds the storage tank system is out of compliance. Owners and operators shall provide the department with the certificate number and expiration date of their designated class A and B operators upon their certification.

D. No re-training or

re-certification is required for class C operators. Class C operators must be trained and certified each time they are designated for a particular storage tank system.

E. Owners and operators of storage tank systems that have been placed in temporary closure in compliance with 20.5.115.1501 NMAC and have a designated trained class A or class B operator are exempt from re-training requirements unless one or both of the following conditions is present:

(1) the storage tank contains greater than one inch of regulated substance; or

(2) the storage tank system has steel components that are in contact with soil, water or concrete.

[20.5.104.406 NMAC - N, 07/24/2018]

20.5.104.407 DEFERRAL OF RE-TRAINING:

A. An owner or operator that is a certified operator may apply in writing to the department for a one-time five-year deferral of re-training required in 20.5.104.406 NMAC if he can demonstrate the following:

(1) he owns no more than two facilities;

(2) no significant changes, modifications or upgrades to either of the facilities have been made during the five-year period immediately preceding the deferral application, including changes to spill prevention equipment, overfill protection equipment, leak detection equipment or corrosion protection equipment;

(3) the average monthly throughput at each facility is less than 20,000 gallons over the last 12 months; and

(4) the facility has not been out of compliance as defined in 20.5.104.406 NMAC during the five-year period immediately preceding the deferral application.

B. The department shall promptly evaluate applications for deferral of re-training, and

shall respond in writing within 60 days of receipt whether the application is granted, denied, or whether more information is needed. The department shall not unreasonably withhold approval if the applicant meets all requirements of Subsection A of this section. It is the responsibility of owners and operators to timely apply for deferrals of re-training so that they may be processed and evaluated well before the expiration of operator certification.

C. The department shall place facilities where the owner or operator has received a deferral of re-training on a priority list for technical assistance and inspection.

D. Owners and operators that receive a deferral of re-training shall complete re-training as required in 20.5.104.406 NMAC within five years after the deferral is granted. In other words, if approved, these owners and operators shall re-certify class A and B operators after 10 years.

[20.5.104.407 NMAC - N, 07/24/2018]

[The department provides an optional form for application for deferral of re-training, available on the Petroleum Storage Tank Bureau's pages on the department website or by calling the department at 505-476-4397 or by writing to the Petroleum Storage Tank Bureau at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505. Owners should submit applications for deferral to the bureau.]

20.5.104.408 APPROVAL OF TRAINERS AND TRAINING:

A. Training elements. Training materials must be updated within 90 days of the effective date of the regulations. The following topics shall be covered in approved training courses for class A and class B operators:

(1) general overview of department UST and AST program, to include emergency generator systems, airport hydrant systems, USTs with field-constructed tanks, hybrid storage tank systems, any other storage tank system

regulated under 20.5 NMAC, and administrative requirements, including:

(a) registration forms and certificates, and process for filing and modifying them;

(b) notification process and general technical requirements for new installations, repairs, replacements and modifications;

(c) confirmed and suspected releases (including confirmation steps for suspected releases), monthly monitoring or release detection test failures, and other system failures that may indicate a release of regulated substance has or is occurring;

(d) annual tank fees and invoicing process;

(e) general requirements for maintaining and demonstrating financial responsibility;

(f) department process for inspections and technical assistance resources available, including written checklists required in 20.5.104.409 NMAC; and

(g) enforcement process for violations;

(2) general overview of other regulations pertaining to ASTs, USTs, and any other storage tank systems regulated under 20.5 NMAC, including but not limited to, fire codes, occupational health and safety, and any related industry practices pertaining to safety;

(3) spill prevention and overfill protection:

(a) rule requirements, including record keeping;

(b) equipment requirements;

(c) periodic inspection and testing requirements; and

(d) operation and maintenance records and reporting requirements;

(4) containment sumps:

(a) rule requirements, including record

keeping;	(b)	(10) general requirements for tank installer and junior installer certification and tester requirements:	(3) agenda and materials to be used for the proposed class that shall include the elements required in this section;
equipment requirements;	(c)	(a) rule requirements, including record keeping;	(4) final tests or other proposed methods of evaluating attendee success;
periodic inspection and testing requirements; and	(d)	(b) when certified installers are required;	(5) copies of proposed documentation to certify successful attendees as certified operators as required in 20.5.104.412 NMAC and to be used for the monthly and annual inspections required in 20.5.104.409 NMAC;
operation and maintenance records and reporting requirements;	(5)	(c) qualification for testers; and	(6) the proposed fee schedule for the training class; and
(5) release detection: for each type of release detection method listed and approved in 20.5.108 NMAC for UST systems, and 20.5.111 NMAC for AST systems:	(a)	(d) how to find certified installers and verify certified status.	(7) the proposed calendar for the proposed training classes that includes location and frequency.
rule requirements, including record keeping;	(a)	B. Training standards. In determining whether to approve any trainer or training, the department shall consider the following:	E. Applications for approval of training classes shall only be accepted during the months of January and October.
monitoring and equipment requirements, including third party approval requirements;	(b)	(1) whether the trainer is a third-party, in-house, educational institution or other;	F. The department shall evaluate applications for approval of training classes and provide a written approval, denial or request for additional information within the following timeframes:
periodic inspection and testing requirements; and	(c)	(2) whether the trainer will offer training in multiple locations throughout the state, regionally or locally;	(1) within 90 days of receipt of the original application;
operation and maintenance records and reporting requirements;	(d)	(3) how often the trainer will offer training;	(2) if the original application is denied and a second application is submitted, within 60 days of receipt of the second application; and
(6) corrosion protection:	(a)	(4) what fee (if any) the trainer will charge;	(3) if the second application is denied and a third application is submitted, within 60 days of receipt of the third application.
rule requirements, including record keeping and reporting requirements;	(b)	(5) whether the trainer will offer classes only to employee or in-house operators, to the general public, or to independent contract operators.	G. If the department has denied an application three times pursuant to Subsection F above, the applicant shall not re-submit an application for a period of one year from the date of receipt of the third denial.
equipment requirements; and	(c)	C. Training options may cover all or a portion of the required elements, and may include:	H. The department may periodically audit or review any training class, and the trainer shall allow a maximum of two department employees to attend any training class on request without charge and without certification (except a reasonable
operation and maintenance needs, including periodic inspections and testing;	(7)	(1) live training sessions in a classroom setting or at a storage tank system;	
through inspection requirements to include rule requirements and recordkeeping;	(8)	(2) internet or computer training program; or	
classes of operators and operator training requirements, including designation and certification;	(9)	(3) any other equivalent training method approved by the department.	
temporary and permanent closure requirements:	(a)	D. Application for approval of training class. Trainers shall apply to the department for approval of training classes. An application for approval of training class shall include at a minimum:	
rule requirements, including record keeping;	(b)	(1) name,	
return to service;	(c)	address and contact information of the proposed trainer;	
site assessment; and	(d)	(2) detailed description of the proposed trainer's experience, education and qualifications to conduct training;	
change in service;			

charge for copying and materials). Upon an audit, the department may require the trainer to update or amend the training material.

I. The department may revoke approval of a training class if it determines that the trainer is not performing adequately or has misrepresented information about the content of the course material.

[20.5.104.408 NMAC - N, 07/24/2018]

[The department provides a form for application for approval of a training class, available on the petroleum storage tank bureau's pages on the department website or by calling the department at 505-476-4397 or by writing to the Petroleum Storage Tank Bureau at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505, Santa Fe, New Mexico. Owners shall submit applications for approval of the training to the bureau.]

20.5.104.409

RESPONSIBILITIES OF CERTIFIED OPERATORS:

A. A certified operator shall not represent himself or herself as certified unless the person has a current valid certificate from an approved trainer.

B. Monthly inspections. Each class A or class B operator shall perform a monthly inspection of each storage tank system for which he is designated, and shall record the results of each inspection on a checklist.

(1) At a minimum, monthly inspections shall be conducted and shall include an inspection of the following:

(a) release detection methods, including monitoring systems and all associated sensors, and whether they appropriately responded to all alarms and any conditions that might have indicated a release of regulated substance had occurred;

(b) integrity of spill prevention equipment (for cracks, holes, or bulges), and for the presence of regulated substance, water, or debris in the spill prevention

equipment;

(c) dispenser and dispenser sumps for the presence of regulated substances, water, and debris;

(d) containment sumps, such as those which contain the submersible pump on the top of underground tanks, for the presence of regulated substances or any indication a release may have occurred; and

(e) overfill prevention equipment for proper operation and if maintenance is required.

(2) The certified operator(s) shall ensure that all inspections as outlined in the operations and maintenance plan, required in 20.5.107.701 NMAC for UST systems and 20.5.110.1001 NMAC for AST systems, are properly performed and conducted by qualified personnel.

(3) Certified operators may use checklists contained in the operations and maintenance plan, required in 20.5.107.701 NMAC for UST systems and 20.5.110.1001 NMAC for AST systems, to document monthly inspections only if the checklists meet the requirements of this section.

(4) The certified operator(s) shall provide the owner and operator with a copy of each inspection checklist, and alert the owner or operator of any condition discovered during the monthly inspection that may require follow-up actions.

(5) Owners and operators shall maintain a copy of inspection checklists and all attachments for the previous 12 months at all attended facilities or, if approved in writing by the department, off-site at a readily available location.

(6) Owners and operators shall provide monthly inspection reports and all attachments for the previous 12 months to the department on request.

C. The certified operator(s) shall be present or

available during compliance inspections at the request of the department.

[20.5.104.409 NMAC - N, 07/24/2018]

[The department provides an optional checklist for compliance with this section. The checklist is available on the petroleum storage tank bureau's pages on the department website, or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.104.410 RECIPROCITY:

No reciprocity, training, or certification from any other state or territory shall qualify an operator to be certified pursuant to this part.

[20.5.104.410 NMAC - N, 07/24/2018]

20.5.104.411 ALTERNATE METHODS:

A. If owners and operators want to propose an alternate method of operator presence at facilities with either AST emergency generator systems or UST emergency generator systems, other than that specified by this part, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the proposed method unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1)** date the form is completed;
- (2)** facility name, facility ID number, address (with county), and telephone number;
- (3)** owner name, owner ID number, address, and telephone number;
- (4)** citation to regulation for which alternate method is requested;
- (5)** brief description of the proposed alternate method;
- (6)** justification of proposed alternate method, including citation to a

standard or code supporting its use, if available; and

(7) demonstration of its equivalent protection of public health, safety, and welfare and the environment.

The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety, and welfare and the environment.
[20.5.104.411 NMAC - N, 07/24/2018]

20.5.104.412 DOCUMENTATION AND RECORDKEEPING:

A. Approved trainers shall provide written verification of training completion for class A, B and C operators that shall include:

(1) the operator's name;

(2) the date and location where training was completed;

(3) the facility name, address and department facility ID number for each facility for which the operator is trained; and

(4) the name, address and phone number of the approved trainer that conducted the training.

B. Written verification of training shall include a certificate of training and wallet card.

C. Owners and operators shall maintain written verification of training for class A, B, and C operators at every storage tank system for all designated certified operators, and make the written verification available for review when requested by the department.

D. Approved trainers shall maintain records of successful completion of training, including examination results, for at least 10 years, and shall make the records available to the department on request.

[20.5.104.412 NMAC - N, 07/24/2018]

HISTORY OF 20.5.104 NMAC:
Pre-NMAC History: none

History of Repealed Material:

20.5.18 NMAC, Petroleum Storage Tanks, Operator Training (filed 6/15/09), repealed 07/24/2018.

Other History:

20.5.18 NMAC, Petroleum Storage Tanks, Operator Training (filed 6/15/09), was renumbered, reformatted, and replaced by 20.5.104 NMAC, Petroleum Storage Tanks, Operator Training, effective 07/24/2018.

ENVIRONMENT DEPARTMENT RESOURCE PROTECTION DIVISION

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 5 PETROLEUM STORAGE TANKS PART 105 CERTIFICATION OF TANK INSTALLERS AND JUNIOR INSTALLERS; REQUIREMENTS FOR TESTERS

20.5.105.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[20.5.105.1 NMAC - N, 07/24/2018]

20.5.105.2 SCOPE: This part applies to persons installing, replacing, repairing, modifying, testing, or removing storage tank systems. The requirements for persons installing, replacing, repairing, or modifying airport hydrant systems, USTs with field-constructed tanks, and hybrid storage tank systems can be found in 20.5.114 NMAC.
[20.5.105.2 NMAC - N, 07/24/2018]

20.5.105.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17

NMSA 1978.
[20.5.105.3 NMAC - N, 07/24/2018]

20.5.105.4 DURATION: Permanent.
[20.5.105.4 NMAC - N, 07/24/2018]

20.5.105.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.105.5 NMAC - N, 07/24/2018]

20.5.105.6 OBJECTIVE: The purpose of this part is to provide for the regulation of persons installing, replacing, repairing, modifying, testing, and removing storage tank systems that contain regulated substances in order to assure that storage tank systems are being installed, replaced, repaired, modified, tested, and removed in a manner which shall not encourage or facilitate leaking, and which shall protect the public health, safety and welfare and the environment of the state.
[20.5.105.6 NMAC - N, 07/24/2018]

20.5.105.7 DEFINITIONS: The definitions in 20.5.101 NMAC apply to this part. Additionally, "entirely above ground piping" means all portions of the piping are completely above ground, are completely visible, and are not in contact with the ground or soil. This definition does not include piping for a system where any portion of the piping is within a transition sump or is below ground.
[20.5.105.7 NMAC - N, 07/24/2018]

20.5.105.8 to 20.5.105.499 [RESERVED]

20.5.105.500 GENERAL REQUIREMENTS FOR INSTALLER OF UST SYSTEMS:

A. Beginning September 16, 1989, no person may install, replace, repair or modify UST systems in this state unless the person is, or employs, an individual who has been certified by the department to perform that work on UST systems. This provision requires certification of the individual who

exercises supervisory control over the installation, replacement, repair or modification work, whether as an officer or employee of the UST system owner or operator performing its own installation, replacement, repair or modification, or as an officer or employee of the person agreeing to perform the installation, replacement, repair or modification for the owner or operator.

Exceptions to this requirement for a certified installer include:

(1) internal lining of a tank through the application of such materials as epoxy resins;

(2) installation, replacement, repair or modification of cathodic protection systems;

(3) any other installation, replacement, repair or modification specifically approved in writing by the department as an exception to the requirement for a certified installer;

(4) an applicant for UST installer certification pursuant to Subsection C of 20.105.5.510 NMAC;

(5) normal maintenance;

(6) work on line or tank leak detection systems performed by technicians trained to work on line or tank leak detection systems by the manufacturer of the systems, or other equivalent training approved by the department; and

(7) persons closing storage tank systems pursuant to 20.5.115 NMAC.

B. Beginning September 16, 1989, no person may install, replace, repair or modify an UST system in this state unless the person is or employs a certified installer who shall control and supervise a given installation, replacement, repair or modification and who shall be physically present on-site at the critical junctures in the installation, replacement, repair or modification.

C. An individual who has met the requirements for certified UST installer may perform the work

of a UST certified junior installer.

D. The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a certified installer exercises responsible supervisory control and is physically present on-site at the critical junctures in the installation, replacement, repair or modification.

E. The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

F. The provisions of this part are not intended to relieve owners and operators of UST systems of their obligations and liabilities under applicable state and federal laws and regulations.

G. The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978. [20.5.105.500 NMAC - N, 07/24/2018]

20.5.105.501 GENERAL REQUIREMENTS FOR INSTALLER OF AST SYSTEMS:

A. Beginning August 15, 2004, no person may install, replace, repair or modify AST systems in this state unless the person is, or employs, an individual who has been certified by the department to perform that work on AST systems. This provision requires certification of the individual who exercises supervisory control over the installation, replacement, repair or modification work, whether as an officer or employee of the AST system owner or operator performing its own installation, replacement, repairs or modification, or as an officer or employee of the person agreeing to perform the installation, replacement, repair or modification for the owner or operator.

Exceptions to this requirement for a certified installer include:

(1) internal lining of a tank through the application of such materials as epoxy resins;

(2) coating or lining of secondary containment for AST systems;

(3) installation, replacement, repair or modification of cathodic protection systems;

(4) any other installation, replacement, repair or modification specifically approved in writing by the department as an exception to the requirement for a certified installer;

(5) an applicant for AST installer certification pursuant to Subsection C of 20.5.105.510 NMAC;

(6) normal maintenance;

(7) work on line or tank leak detection systems performed by technicians trained to work on line or tank leak detection systems by the manufacturer of the systems, or other equivalent training approved by the department; and

(8) persons closing storage tank systems pursuant to 20.5.115 NMAC.

B. Beginning August 15, 2004, no person may install, replace, repair or modify an AST system in this state unless the person is or employs a certified installer who shall control and supervise a given installation, replacement, repair or modification and who shall be physically present on-site at the critical junctures in the installation, replacement, repair or modification.

C. An individual who has met the requirements for certified AST installer may perform the work of an AST certified junior installer.

D. The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a certified installer exercises responsible supervisory control and is physically present on-site at the critical junctures in the installation, replacement, repair or modification.

E. The requirements

of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

F. The provisions of this part are not intended to relieve owners and operators of AST systems of their obligations and liabilities under applicable state and federal laws and regulations.

G. The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978. [20.5.105.501 NMAC - N, 07/24/2018]

20.5.105.502 GENERAL REQUIREMENTS FOR JUNIOR INSTALLER OF AST SYSTEMS:

A. Beginning July 24, 2019, no person may install, replace, repair or modify spill and overfill prevention equipment on AST systems in this state unless the person is an individual who has been certified by the department to perform that work on AST systems. Exceptions to the requirement for an AST certified junior installer are listed in Paragraphs (1) through (8) of Subsection A of 20.5.105.501 NMAC.

B. An individual who is an AST junior installer shall be certified to perform installations, repairs, replacements, and modifications of spill and overfill prevention equipment.

C. Individuals who are AST junior installers shall be certified to repair and replace entirely above ground piping on ASTs if they are licensed by the New Mexico construction industries division in accordance with 14.6.6 NMAC as a journeyman pipe fitter (JPF), MM-4, or MM-98.

D. The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as an AST certified junior installer exercises responsible supervisory control and is

physically present on-site during the replacement, repair or modification.

E. The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

F. The provisions of this part are not intended to relieve owners and operators of AST systems of their obligations and liabilities under applicable state and federal laws and regulations.

G. The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978. [20.5.105.502 NMAC - N, 07/24/2018]

20.5.105.503 GENERAL REQUIREMENTS FOR JUNIOR INSTALLER OF UST SYSTEMS:

A. Beginning July 24, 2019, no person may install, replace, repair or modify spill and overfill prevention equipment on UST systems in this state unless the person is an individual who has been certified by the department to perform that work on UST systems. Exceptions to the requirement for a UST certified junior installer are listed in Paragraphs (1) through (7) of Subsection A of 20.5.105.500 NMAC.

B. An individual who is an UST junior installer shall be certified to perform installations, repairs, replacements, and modifications of spill and overfill prevention equipment. An UST junior installer shall not repair or replace piping that routinely contains a regulated substance.

C. A UST certified junior installer shall not install UST systems or piping.

D. The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a UST certified junior installer exercises responsible supervisory control and is physically

present on-site at the critical junctures in the installation, replacement, repair or modification of spill and overfill prevention equipment.

E. The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

F. The provisions of this part are not intended to relieve owners and operators of UST systems of their obligations and liabilities under applicable state and federal laws and regulations.

G. The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978. [20.5.105.503 NMAC - N, 07/24/2018]

20.5.105.504 GENERAL REQUIREMENTS FOR PERSONS PERFORMING TESTS ON STORAGE TANK SYSTEMS AND EQUIPMENT:

A. Beginning on July 24, 2019, owners and operators shall demonstrate that persons who perform tests on storage tank systems regulated under 20.5 NMAC have the experience, training, and education to perform the following:

(1) periodic testing of spill prevention equipment and containment sumps as required in 20.5.107.704 NMAC, 20.5.107.706 NMAC, 20.5.110.1005 NMAC, and 20.5.110.1007 NMAC;

(2) periodic functionality testing and inspections of overfill prevention equipment as required in 20.5.107.704 NMAC and 20.5.110.1005 NMAC;

(3) functionality testing and inspections of automatic tank gauging systems as required in 20.5.108.805 NMAC and 20.5.111.1104 NMAC;

(4) precision tank tightness tests and line tightness tests;

(5) functionality testing of automatic line leak detectors, interstitial sensors, and sump sensors; and

(6) periodic testing of cathodic protection systems as required in 20.5.107.705 NMAC and 20.5.110.1006 NMAC.

B. Owners and operators shall ensure information on the tester's education, experience, and training is submitted to the department for each required test conducted on storage tank systems regulated under 20.5 NMAC. Testers may submit this information on the owner's and operator's behalf prior to conducting any testing on regulated storage tank systems and subsequently after changes to the information required in Paragraphs (1) through (5) of this subsection. The information to be submitted is as follows:

(1) any business name used by the tester, with the business address, telephone number, electronic mail address, and facsimile transmission number;

(2) name of the tester;

(3) tester's certification number from each testing equipment manufacturer and the expiration date for the certification;

(4) name of the manufacturer, association, or institute where they gained their certification or education.

(5) testers who use the testing procedures from petroleum equipment institute's *Recommended Practice, PEI RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"* shall include the date they took and passed the test from the petroleum equipment institute.

(6) Number of years of experience in each of the testing protocols or procedures the tester will use.

C. Owners and operators shall ensure testers meet the following:

(1) perform only those tests and inspections for

which they have training, experience, and certification from either the manufacturer of the testing equipment or the manufacturer of the equipment being tested or inspected.

(2) maintain certification with the equipment manufacturer for the tester and any testing apparatus they use, if they have a certification process or requirements. If the testing equipment manufacturer has periodic calibration and maintenance requirements the tester shall meet them.

D. A person shall not perform any test on storage tank systems for which they are also the owner and operator as defined in 20.5.101 NMAC or they are an employee of the owner or operator.

E. A tester who is trained and certified to functionality test automatic line leak detectors may replace line leak detectors that no longer meet the requirements in Subsection A of 20.5.108.810 NMAC or Subsection A of 20.5.111.1105 NMAC.

F. A person who has met the requirements for either AST or UST certified installer may perform non-precision integrity tests of the storage tank systems during the installation, modification, repair, or replacement without having to meet the requirements of a tester.

G. The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

H. The provisions of this part are not intended to relieve owners and operators of storage tank systems of their obligations and liabilities under applicable state and federal laws and regulations. [20.5.105.504 NMAC - N, 07/24/2018]

20.5.105.505 INDIVIDUAL CERTIFICATION FOR INSTALLER OF UST SYSTEMS:

A. An applicant for an

individual's UST installer certification shall meet all of the following requirements in order to receive certification from the department.

(1) The applicant shall file an application with the department accompanied by a nonrefundable fee of \$50. At a minimum the application shall contain the following information:

(a) applicant's name, permanent residence address and telephone number;

(b) applicant's business address and any business name used by the applicant, with the business address, telephone number and facsimile transmission number;

(c) applicant's date of birth;

(d) applicant's social security number;

(e) construction industries division license number, type of license, name of license holder under which applicant is working and expiration of license;

(f) whether the construction industries division license in subparagraph (e) of Paragraph (1) of this subsection has ever been suspended or revoked; if so, an explanation of the circumstances of the suspension or revocation;

(g) the supervisor's name, business name, address and telephone number with whom the applicant apprenticed as a tank installer;

(h) a description of the number of years of experience the applicant has as a tank installer (specify USTs and ASTs);

(i) a description of the types and number of tanks the applicant has installed (specify USTs and ASTs) in the past four years;

(j) a description of the types and number of piping systems the applicant has installed, replaced, repaired or modified (specify USTs and ASTs) in the past four years; and

(k)

whether applicant owes child support in New Mexico.

(2) The applicant shall be an individual and at least 18 years of age.

(3) The applicant need not, for purposes of this part, be a resident of the state.

(4) The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

(5) Applicants shall demonstrate in the application that they have met the experience requirements of 20.5.105.509 NMAC.

(6) The applicant shall pass the on-site examination for which 20.5.105.510 NMAC provides. The installation for an on-site examination shall include the on-site installation of a tank, dispenser system or meter, venting, ancillary equipment and initial testing.

(7) The applicant shall provide the department with evidence in the application that, within the prior three months, the applicant has passed:

(a) a New Mexico laws and rules UST test administered by the department pursuant to 20.5.105.514 NMAC; and

(b) a national technical UST installer's test administered by an approved certification educator and has been certified by that educator. For purposes of this section, the international code council is an approved certification educator.

(8) As an alternative to the tests required in Paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall

not be approved for the requirements in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical installation requirements.

(9) The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

B. Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair, or modify UST systems.

[20.5.105.505 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to apply for certification. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505. Applicants should submit application forms to the Petroleum Storage Tank Bureau, attention: Application for Certified Installer, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.105.506 INDIVIDUAL CERTIFICATION FOR INSTALLER OF AST SYSTEMS:

A. An applicant for an individual's AST installer certification shall meet all of the following requirements in order to receive certification from the department.

(1) The applicant shall file an application with the department with the information required in Paragraph (1) of Subsection A of 20.5.105.505 NMAC, accompanied by a nonrefundable fee of \$50.00.

(2) The applicant shall be an individual and at least 18 years of age.

(3) The applicant need not, for purposes of this part, be a resident of the state.

(4) The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

(5) Applicants shall demonstrate in the application that they have met the experience requirements of 20.5.105.509 NMAC.

(6) The applicant shall pass the on-site examination for which 20.5.105.510 NMAC provides. The installation for an on-site examination shall include the on-site installation of a tank and tank foundation, dispenser system or meter, venting, ancillary equipment and initial testing. Installation of a self-contained, concrete-encased or self-contained, skid-mounted AST system is not an AST system installation for purposes of this requirement.

(7) The applicant shall provide the department with evidence in the application that, within the prior three months, the applicant has passed:

(a)

a New Mexico laws and rules AST test administered by the department pursuant to 20.5.105.514 NMAC; and

(b)

a national technical AST installer's test administered by an approved certification educator and has been certified by that educator. For purposes of this section, the international code council is an approved certification educator.

(8) As an alternative to the tests required in Paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall not be approved for the requirements in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical installation requirements.

(9) The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

B. Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to

install, replace, repair or modify AST systems.

[20.5.105.506 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to apply for certification. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the petroleum storage tank bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505. Applicants should submit application forms to the Petroleum Storage Tank Bureau, attention: Application for Certified Installer, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.105.507 INDIVIDUAL CERTIFICATION FOR JUNIOR INSTALLER OF AST SYSTEMS:

A. An applicant for an individual's AST junior installer certification shall meet all of the following requirements in order to receive certification from the department.

(1) The applicant shall file an application with the department with the information required in Paragraph (1) of Subsection A of 20.5.105.508 NMAC, accompanied by a nonrefundable fee of \$50.00.

(2) The applicant shall be an individual at least 18 years of age.

(3) The applicant need not, for purposes of this part, be a resident of the state.

(4) The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

(5) Applicants shall demonstrate in the application that they have met the experience requirements of Subsection B of

20.5.105.509 NMAC.

(6) Applicants shall demonstrate certification by the manufacturer of the spill and overflow equipment they install, repair, replace, or modify.

(7) Applicants shall submit a copy of their journeyman pipe fitter (JPF), MM-4, or MM-98 license if they are applying to repair and replace entirely above ground piping in addition to activities listed in Subsection B of 20.5.105.502 NMAC.

(8) The applicant shall provide the department with evidence in the application that, within the prior three months, the applicant has passed:

(a) a New Mexico laws and rules AST test for junior installer certification administered by the department pursuant to 20.5.105.514 NMAC; and

(b) a national technical AST test administered by a certification educator approved by the department and has been certified by that educator.

(9) As an alternative to the tests required in Paragraph (8) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall not be approved for the requirements in Paragraph (8) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations,

20.5 NMAC, and technical AST requirements.

(10) The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

B. Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair or modify AST spill and overfill prevention equipment.

[20.5.105.507 NMAC - N, 07/24/2018]

20.5.105.508 INDIVIDUAL CERTIFICATION FOR JUNIOR INSTALLER OF UST SYSTEMS:

A. An applicant for an individual's UST junior installer certification shall meet all of the following requirements in order to receive certification from the department.

(1) The applicant shall file an application with the department accompanied by a nonrefundable fee of \$50.00. At a minimum the application shall contain the following information:

- (a) applicant's name, permanent residence address and telephone number;
- (b) applicant's business address and any business name used by the applicant, with telephone number and facsimile transmission number;
- (c) applicant's date of birth;
- (d) applicant's social security number;
- (e) construction industries division license number, type of license, name of license holder under which applicant is working and expiration of

license;

(f) whether the construction industries division license in Subparagraph (e) of Paragraph (1) of this subsection has ever been suspended or revoked; if so, an explanation of the circumstances of the suspension or revocation;

(g) the supervisor's name, business name, address and telephone number with whom the applicant worked as a junior installer;

(h) a description of the number of years of experience the applicant has installing, replacing, modifying, and repairing spill and overfill prevention equipment (specify USTs and ASTs);

(i) a description of the number of spill and overfill prevention equipment installations, repairs, replacements, or modifications the applicant has performed (specify USTs and ASTs) in the past four years; and

(j) whether applicant owes child support in New Mexico.

(2) The applicant shall be an individual and at least 18 years of age.

(3) The applicant need not, for purposes of this part, be a resident of the state.

(4) The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

(5) Applicants shall demonstrate in the application that they have met the experience requirements of Subsection B of 20.5.105.509 NMAC.

(6) Applicants shall demonstrate certification by the manufacturer of the spill and overfill equipment they install, repair, replace, or modify.

(7) The

applicant shall provide the department with evidence in the application that, within the prior three months, the applicant has passed:

- (a) a New Mexico laws and rules UST test for junior installer certification administered by the department pursuant to 20.5.105.514 NMAC; and
- (b) a national technical UST test administered by a certification educator approved by the department and has been certified by that educator.

(8) As an alternative to the tests required in Paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall not be approved for the requirements in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical UST requirements.

(9) The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

B. Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked

where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair, or modify UST spill and overfill prevention equipment.

[20.5.105.508 NMAC - N, 07/24/2018]

20.5.105.509 EXPERIENCE REQUIREMENTS:

A. Installer:

(1) To

qualify for individual certification under 20.5.105.505 NMAC or 20.5.105.506 NMAC, an applicant shall demonstrate that the applicant has had two years of experience, within the three years immediately prior to making the application, of field experience in the installation, replacement, repair or modification of the type of storage tank systems for which the applicant is applying for certification or, with the approval of the department, closely related work. Additionally, the applicant shall demonstrate they have hands-on supervised experience in the installation of two petroleum storage tank systems of the tank type (AST or UST) they are applying for within the two years of experience. The applicant's demonstration shall include copies of inspection reports (or other similar documents) for the work performed, which shall include the name, phone number and email contact of the supervising inspector. For purposes of this part, the applicant's field experience may be demonstrated in New Mexico or other states.

(2) An

engineering degree or a license to practice engineering may substitute for six months of the experience required by Subsection A of this section.

B. Junior installer:

(1) To

qualify for individual certification under 20.5.105.507 NMAC or 20.5.105.508 NMAC, an applicant shall demonstrate that the applicant has had one year, within the three years immediately prior to making

the application, of field experience with storage tank spill and overfill equipment installations, replacements, modifications, or repairs.

(2) To qualify for individual certification under 20.5.105.507 NMAC as an AST junior installer who can repair or replace entirely above ground piping, applicants shall demonstrate that they meet the requirements in Subsection C of 20.5.105.502 NMAC in addition to the requirements in Paragraph (1) of this subsection.

(3) The applicant's demonstration shall include copies of inspection reports (or other similar documents) for the work performed which shall include the name, phone number and email contact of the supervising inspector. For purposes of this part, the applicant's field experience may be demonstrated in New Mexico or other states.

[20.5.105.509 NMAC - N, 07/24/2018]

20.5.105.510 ON-SITE EXAMINATION FOR INSTALLER:

A. To qualify for individual certification under 20.5.105.505 NMAC or 20.5.105.506 NMAC, an applicant shall pass an on-site examination consisting of a successful installation of the regulated and applicable (AST or UST) type of storage tank system in the presence of a designated employee of the department. The applicant shall complete each aspect of the installation successfully in order to pass the examination, including use of proper materials, proper assembly of materials and proper testing of the tank and piping at the appropriate times during the installation.

B. An applicant may request an on-site examination for UST or AST certification any time within 180 days of the date of submission of the application provided for in Paragraph (1) of Subsection A of 20.5.105.505 NMAC or Paragraph (1) of Subsection A of 20.5.105.506 NMAC and shall accompany the request with

a nonrefundable \$300 fee. The applicant shall notify the department of the date and the site of the on-site examination 30 days prior to the examination. For good cause shown, the department may, in its sole discretion, grant an applicant one 180-day extension of the time period during which the applicant must take the on-site examination. The department shall not grant more than one extension. If the applicant does not schedule an on-site examination within these time periods, the applicant shall file a new application for certification and comply with all the application requirements in 20.5.105.505 NMAC or 20.5.105.506 NMAC as applicable.

C. The applicant shall be responsible, subject to approval by department staff, for identifying a satisfactory site and date(s) for the on-site examination. The applicant is also responsible for ensuring that all necessary equipment and appropriate materials necessary for the installation are on site. Department staff shall fail any applicant who has three significant errors during the on-site examination. For purposes of this section, significant errors include, but are not limited to, use of materials or installation practices that violate these regulations, manufacturer's installation instructions, or other industry standards. As long as a department staff member responsible for assessing the on-site exam is present, the applicant may perform the activities involved in the exam even though the applicant is not a certified installer.

D. The installation shall be assessed by the department employee present at the examination who shall present findings to the department, with a recommendation as to whether or not the applicant passed the on-site examination. The department shall make the determination as to the success of the installation and notify the applicant by mail within 30 days of completion of the installation. If the applicant did not pass the examination, the department shall inform the applicant that the applicant may retake the

examination upon payment of a nonrefundable \$300.00 fee and upon such conditions as the department may impose to ensure that the applicant is prepared to perform a more successful installation. If the applicant does not retake the examination within 180 days of being notified that the applicant did not pass the examination or if the applicant fails the on-site examination a second time, the applicant shall file a new application for certification with the department if the applicant desires to become a certified installer.

E. The department employee may stop an on-site examination if the employee determines that the installation being conducted constitutes a threat to public health, safety or welfare or the environment. If the examiner stops the installation, the examiner's findings shall be presented to the department with a "do not pass" recommendation. The department shall notify the applicant of its decision as provided in Subsection D of this section.

[20.5.105.510 NMAC - N, 07/24/2018]

20.5.105.511 DENIAL OF CERTIFICATION: An applicant whose application for certification is denied shall be afforded an opportunity for a hearing before the secretary under 20.5.5.519 NMAC, in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-33 NMSA 1978, and the department's adjudicatory procedures in 20.1.5 NMAC.

[20.5.105.511 NMAC - N, 07/24/2018]

20.5.105.512 RENEWAL OF CERTIFICATION FOR INSTALLER:

A. A certification shall expire March 16 of the fourth calendar year after it was issued. Applications for renewal of certification issued under 20.5.105.505 NMAC and 20.5.105.506 NMAC shall be submitted no later than February 16 of the fourth year after the

certification was granted to ensure renewal by March 16. Certification for installers who do not submit a timely renewal application shall be considered lapsed and invalid on March 16; the department shall not accept applications for renewal after February 16. Any installer whose certification has lapsed as provided in this subsection shall submit an application for new certification under 20.5.105.505 NMAC or 20.5.105.506 NMAC and comply with the requirements thereof.

B. At least 90 days before the expiration date of certification, the department shall mail a renewal application reminder to the installer, at the installer's address of record with the department. It is the duty and responsibility of the installer to timely submit the renewal application for certification pursuant to Subsection A whether or not an application reminder has been received from the department.

C. To qualify for renewal, a UST certified individual or installer shall:

(1) file an application with the department with the information required in Paragraphs (1), (4) and (9) of Subsection A of 20.5.105.505 NMAC, accompanied by a nonrefundable \$50.00 fee;

(2) demonstrate as required by 20.5.105.509 NMAC that the installer has completed at least two UST system installations, replacements, repairs or modifications during the four-year period preceding the renewal application; and

(3) demonstrate that the installer has passed a New Mexico laws and rules UST test administered by the department pursuant to 20.5.105.514 NMAC, within the prior three months.

D. To qualify for renewal, an AST certified installer shall:

(1) file an application with the department with the information required in Paragraphs (1), (4) and (9) of Subsection A of 20.5.105.506 NMAC,

accompanied by a nonrefundable \$50.00 fee;

(2) demonstrate as required by 20.5.105.509 NMAC that the installer has completed at least two AST system installations, replacements, repairs or modifications during the four-year period preceding the renewal application; and

(3) demonstrate that the installer has passed a New Mexico laws and rules AST test administered by the department pursuant to 20.5.105.514 NMAC, within the prior three months.

E. An applicant for renewal shall be afforded opportunity for hearing before the secretary, as provided in 20.5.105.519 NMAC, in the event the department contemplates withholding renewal for any cause other than failure to pay the required renewal fee.

F. For purposes of this section, "demonstrate" means provide copies of registration forms, inspection reports, installation checklists, written statements or other documents verifying the certified installer's on-site, physical, hands-on participation in critical junctures of a particular installation, replacement, repair or modification.

[20.5.105.512 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to apply for renewal of certification. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505. Applicants should submit renewal forms to the Petroleum Storage Tank Bureau, attention: Application for Certified Installer, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.105.513 RENEWAL OF CERTIFICATION FOR JUNIOR INSTALLER:

A. A certification for junior installer shall expire March

16 of the fourth calendar year after it was issued. Applications for renewal of certification issued under 20.5.105.507 NMAC and 20.5.105.508 NMAC shall be submitted no later than February 16 of the fourth year after the certification was granted to ensure renewal by March 16. Certification for junior installers who do not submit a timely renewal application shall be considered lapsed and invalid on March 16; the department shall not accept applications for renewal after February 16. Any junior installer whose certification has lapsed as provided in this subsection shall submit an application for new certification under 20.5.105.507 NMAC or 20.5.105.508 NMAC and comply with the requirements thereof.

B. At least 90 days before the expiration date of certification, the department shall mail a renewal application reminder to the junior installer, at the junior installer's address of record with the department. It is the duty and responsibility of the junior installer to timely submit the renewal application for certification pursuant to Subsection A whether or not an application reminder has been received from the department.

C. To qualify for renewal, a UST certified junior installer shall:

(1) file an application with the department with the information required in Paragraphs (1), (4) and (9) of Subsection A of 20.5.105.508 NMAC, accompanied by a nonrefundable \$50 fee;

(2) demonstrate as required by 20.5.105.509 NMAC that the junior installer has completed at least two spill and overfill prevention equipment installations, replacements, repairs or modifications on UST systems during the four-year period preceding the renewal application; and

(3) demonstrate that the junior installer has passed a New Mexico laws and rules UST test for junior installer certification administered by the

department pursuant to 20.5.105.514 NMAC, within the prior three months.

D. To qualify for renewal, AST certified junior installers shall:

(1) file an application with the department with the information required in Paragraphs (1), (4) and (10) of Subsection A of 20.5.105.507 NMAC, accompanied by a nonrefundable \$50.00 fee;

(2) demonstrate as required by 20.5.105.509 NMAC that the junior installer has completed at least two replacements, repairs or modifications of spill and overfill prevention equipment on AST systems during the four-year period preceding the renewal application;

(3) demonstrate that the junior installer has passed a New Mexico laws and rules AST test for junior installer certification administered by the department pursuant to 20.5.105.514 NMAC, within the prior three months; and

(4) if seeking to renew their certification to repair and replace entirely above ground piping, demonstrate that they have completed at least two repairs or replacements of above ground piping on AST systems during the four-year period preceding the renewal application or submit a current journeyman pipe fitter (JPF), MM-4, or MM-98 license from the New Mexico construction industries division in accordance with 14.6.6 NMAC.

E. An applicant for renewal shall be afforded opportunity for hearing before the secretary, as provided in 20.5.105.519 NMAC, in the event the department contemplates withholding renewal for any cause other than failure to pay the required renewal fee.

F. For purposes of this section, "demonstrate" means provide copies of registration forms, inspection reports, installation checklists, written statements or other documents verifying the certified junior installer's on-site, physical,

hands-on participation in critical junctures of a particular installation, replacement, repair or modification of spill and overfill prevention equipment.

[20.5.105.513 NMAC - N, 07/24/2018]

20.5.105.514 NEW MEXICO LAWS AND RULES TEST:

A. The department shall create and administer written tests on the rules contained in 20.5 NMAC, petroleum storage tanks. Tests for AST and UST installer applicants and AST and UST junior installer applicants may be different tests. The department shall offer tests at least monthly at a charge of \$45 per installer or junior installer applicant per test, paid to the storage tank fund.

B. Applicants may apply to take the New Mexico laws and rules test at any office of the bureau, at least 15 days before a test is given. The department shall post on its webpage dates, times and locations that tests will be offered. The department shall not administer any test until payment is received.

C. An applicant must pass a test by a grade of seventy percent or higher. The department will notify applicants in writing of a passing or failing grade no later than 15 working days after they took a test.

D. An applicant may re-take the New Mexico laws and rules test for each type of test once within 30 days of receipt of notice of a failing grade. If the applicant does not pass a test the second time, the applicant must reapply for certification complying with the requirements for initial certification in the applicable sections of this part. [20.5.105.514 NMAC - N, 07/24/2018]

20.5.105.515 INSTALLER DUTIES AND OBLIGATIONS:

A. No person shall agree to perform installation, replacement, repair or modification services unless the person is or employs a certified installer competent to perform the particular installation, replacement, repair or

modification involved.

B. A certified installer shall have adequate knowledge of appropriate materials, technical requirements and installation, replacement, repair or modification procedures for any storage tank system that the installer undertakes to install, replace, repair or modify. A certified installer shall not perform any installation, replacement, repair or modification, or affix an installer signature or certification number to any installation, replacement, repair or modification for which the installer lacks competence.

C. A certified installer shall:

(1) exercise responsible supervisory control over any installation, replacement, repair or modification undertaken;

(2) at a minimum, be physically present on-site at all critical junctures in the installation, replacement, repair or modification; and

(3) give notice as required by these regulations, 20.5 NMAC.

D. A certified installer shall not certify to an owner or operator of a storage tank system that an installation, replacement, repair or modification is complete unless the installation, replacement, repair, or modification complies with the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the petroleum storage tank regulations promulgated pursuant to the act, 20.5 NMAC. The certified installer is responsible for the accuracy of any representations made to the owner or operator.

E. Certified installers have a duty to report to the department any and all suspected or confirmed releases, as those terms are used in 20.5.118 NMAC, detected at a site or the surrounding area by the installer or persons working under the installer's supervisory control, as required by 20.5.118 NMAC.

F. Certified installers shall not perform any installation, replacement, repair, modification or removal without providing notice as

required by the provisions of 20.5 NMAC, except for emergency repairs as described in 20.5.107 NMAC and 20.5.110 NMAC, and defined in 20.5.101 NMAC. Certified installers shall not perform any activity described as a critical juncture in 20.5.105 NMAC, without providing the 24-hour notice required by that part, except for emergency repairs.

G. Certified installers shall comply with all of the provisions of the petroleum storage tank regulations, 20.5 NMAC. [20.5.105.515 NMAC - N, 07/24/2018]

20.5.105.516 CERTIFIED JUNIOR INSTALLER DUTIES AND OBLIGATIONS:

A. No individual shall agree to perform an installation, replacement, repair or modification of spill and overfill prevention equipment unless the individual is a certified junior installer and is competent to perform the installation, replacement, repair or modification.

B. Junior installers shall acquire and maintain certification from the manufacturers of the spill and overfill prevention equipment they modify, install, replace, or repair, as applicable.

C. A junior installer of AST systems who is certified to repair or replace entirely above ground piping shall maintain all certifications and licenses as required by 20.5.105 NMAC.

D. A junior installer shall exercise responsible supervisory control when helpers are used.

E. A junior installer has a duty to report to the department any and all suspected or confirmed releases, as those terms are used in 20.5.118 NMAC, detected at a site or the surrounding area by the junior installer or persons working under the junior installer's supervisory control, as required by 20.5.118 NMAC.

F. A junior installer shall not perform any installation, replacement, repair, modification or removal of spill and overfill prevention equipment without

providing notice as required by the provisions of 20.5 NMAC.

G. A junior installer shall comply with all of the provisions of the petroleum storage tank regulations, 20.5 NMAC. [20.5.105.516 NMAC - N, 07/24/2018]

20.5.105.517 COMPLAINTS:

A. When the department receives a signed written complaint from any person which indicates an apparent violation of applicable law by an individual certified under this part, the department shall provide a copy of the complaint to the certified individual along with a letter from the department specifying the statute, regulation, order or license alleged to be violated. The letter shall include a reasonable description of the acts or practices alleged to be in violation of applicable law. The department shall provide a copy of the letter to the complainant.

B. The certified individual may, but need not, file a response to the complaint with the department. After reviewing the complaint together with any other matter in the certified individual's record, the department shall determine whether further action is to be taken. [20.5.105.517 NMAC - N, 07/24/2018]

20.5.105.518 INVESTIGATIONS, ENFORCEMENT, PENALTIES:

A. The department may undertake such investigations and take such actions as it deems necessary to ensure compliance with the provisions of this part, including the issuance of compliance orders and the commencement of civil actions under the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978. The department may also initiate proceedings to revoke certification of an individual certified under Subsection C of Section 74-4-4.4 NMSA 1978 and 20.5.114 NMAC. The department may revoke certification upon grounds that the certified individual:

(1) exercised fraud, misrepresentation or deception in obtaining the certification;

(2) exhibited gross incompetence in the installation, replacement, repair, modification or removal of a storage tank system; or

(3) was derelict in the performance of a duty as a certified installer or junior installer, as required in the applicable sections of this part (including repeated failure to provide notice of releases or of the installation, replacement, repair, modification or removal of storage tank systems as required in the applicable sections of this part).

B. Persons violating the provisions of this part may be subject to the imposition of penalties under the Hazardous Waste Act. [20.5.105.518 NMAC - N, 07/24/2018]

20.5.105.519 DEPARTMENT ACTIONS AGAINST CERTIFIED INSTALLERS AND CERTIFIED JUNIOR INSTALLERS:

A. When the department contemplates denying an application for or revoking certification, it shall serve upon the applicant or certified individual a written notice of contemplated action as required by the Uniform Licensing Act, Sections 61-1-1 through 61-1-33 NMSA 1978.

B. Proceedings under this section shall be conducted in accordance with the provisions of the Uniform Licensing Act, Sections 61-1-1 through 61-1-33 NMSA 1978 and in accordance with the department's adjudicatory procedures in 20.1.5 NMAC.

C. If the department revokes certification pursuant to this section, the certified individual may not apply for certification for a minimum of two years for the type of certification revoked. However, if the certified individual is certified for another type of certification in this part, the certified individual shall not be affected by the revocation of the certification for the other type of certification.

[20.5.105.519 NMAC - N, 07/24/2018]

20.5.105.520 AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND HYBRID STORAGE TANK SYSTEMS:

A. Certified installers shall only install, modify, repair, or replace airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems if they also meet the requirements in 20.5.114.1400 NMAC.

B. Certified installers and junior installers shall only install, replace, modify, or repair spill and overfill prevention equipment associated with airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems if they also meet the requirements in 20.5.114.1400 NMAC.

[20.5.105.520 NMAC - N, 07/24/2018]

HISTORY OF 20.5.105 NMAC:

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

EIB/USTR-14, Underground Storage Tank Regulations - Part XIV - Certification of Tank Installers, filed 2/14/89.

EIB/USTR-14, Underground Storage Tank Regulations - Part XIV - Certification of Tank Installers, filed 8/4/89.

History of Repealed Material:

20 NMAC 5.14, Environmental Protection, Underground Storage Tanks, Certification of Tank Installers (filed 2/27/97), repealed 8/15/03.

20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers (filed 7/16/03) repealed 4/4/08.

20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers (filed 3/5/08) repealed 6/15/09.

20.5.14 NMAC, Petroleum Storage

Tanks, Certification of Tank Installers (filed 6/15/09) repealed 7/24/18.

Other History:

EIB/USTR-14, Underground Storage Tank Regulations - Part XIV - Certification of Tank Installers, (filed 8/14/89) renumbered, reformatted and replaced by 20 NMAC 5.14, Underground Storage Tanks, Certification of Tank Installers, effective 11/5/95.

20 NMAC 5.14, Underground Storage Tanks, Certification of Tank Installers, (filed 10/6/95) replaced by 20 NMAC 5.14, Underground Storage Tanks, Certification of Tank Installers, effective 4/1/97.

20 NMAC 5.14, Underground Storage Tanks, Certification of Tank Installers, (filed 2/27/97) renumbered, reformatted and replaced by 20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers, effective 8/15/03.

20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers (filed 7/16/03) replaced by 20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers, effective 4/4/08.

20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers (filed 3/5/08) replaced by 20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers, effective 6/15/09.

20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers (filed 6/15/09) replaced by 20.5.105 NMAC, Petroleum Storage Tanks, Certification of Tank Installers and Junior Installers; Requirements for Testers, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 106 NEW AND**

UPGRADED UNDERGROUND STORAGE TANK SYSTEMS: DESIGN, CONSTRUCTION, AND INSTALLATION

20.5.106.1 ISSUING

AGENCY: New Mexico Environmental Improvement Board.
[20.5.106.1 NMAC - N, 07/24/2018]

20.5.106.2 SCOPE: This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.
[20.5.106.2 NMAC - N, 07/24/2018]

20.5.106.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.
[20.5.106.3 NMAC - N, 07/24/2018]

20.5.106.4 DURATION:

Permanent.
[20.5.106.4 NMAC - N, 07/24/2018]

20.5.106.5 EFFECTIVE

DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.106.5 NMAC - N, 07/24/2018]

20.5.106.6 OBJECTIVE:

The purpose of 20.5.106 NMAC is to set forth the requirements for the design, construction, installation and upgrading of underground storage tank systems in a manner that will prevent releases and to protect the public health, safety and welfare and the environment of the state.
[20.5.106.6 NMAC - N, 07/24/2018]

20.5.106.7 DEFINITIONS:

The definitions in 20.5.101 NMAC

apply to this part.
[20.5.106.7 NMAC - N, 07/24/2018]

20.5.106.8 to 20.5.106.599 [RESERVED]

20.5.106.600 GENERAL PERFORMANCE STANDARDS FOR UST SYSTEMS:

A. In order to prevent releases due to structural failure, corrosion or spills and overfills for as long as a UST system is used to store regulated substances, owners and operators of any UST system shall:

(1) properly design, construct, and initially test each new UST system;

(2) provide project drawings to the bureau 30 days prior to installation; and

(3) ensure that any portion of a UST system that routinely contains regulated substances and is in contact with the ground, water, or other electrolyte shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

B. Owners and operators shall ensure that the entire UST system is compatible with any regulated substance conveyed, as required by 20.5.107.708 NMAC.

C. Tanks and piping installed or replaced after April 4, 2008 must be secondarily contained in accordance with 20.5.106.606 NMAC and use interstitial monitoring in accordance with 20.5.108.808 NMAC, 20.5.108.811 NMAC, and 20.5.108.813 NMAC, except for suction piping that meets the requirements of Subsection B of 20.5.108.813 NMAC.

D. Secondary containment must be able to contain regulated substances leaked from the primary containment until they are detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the UST.

[20.5.106.600 NMAC - N, 07/24/2018]

20.5.106.601 PERFORMANCE STANDARDS FOR FIBERGLASS-REINFORCED PLASTIC

USTS: If a UST is constructed of fiberglass-reinforced plastic, owners and operators shall comply with the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

A. *Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures";* or

B. *Underwriters' Laboratories of Canada Standard 615, "Standard for Fibre Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids".*

[20.5.106.601 NMAC - N, 07/24/2018]

20.5.106.602 PERFORMANCE STANDARDS FOR STEEL USTs:

A. Owners and operators shall cathodically protect steel USTs by:

(1) coating the tank with a suitable dielectric material;

(2) ensuring that field-installed cathodic protection systems are designed by a corrosion expert;

(3) designing and installing impressed current or galvanic systems to allow ready determination of current operating status as required in Subsection C of 20.5.107.705 NMAC; and

(4) operating and maintaining cathodic protection systems in accordance with 20.5.107 NMAC.

B. If a UST is constructed of steel, owners and operators shall comply with the requirements of the current edition of an industry standard or code of

practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the applicable requirements of this section:

(1) *Steel*

Tank Institute, "STI-P3 Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";

(2)

Underwriters Laboratories Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks";

(3)

Underwriters Laboratories of Canada Standard 603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids";

(4)

Underwriters Laboratories of Canada Standard 603.1, "External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids";

(5)

Underwriters' Laboratories of Canada S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems";

(6) *NACE*

International Standard Practice SP0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";

(7) *Steel Tank*

Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or

(8)

Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".

[20.5.106.602 NMAC - N, 07/24/2018]

20.5.106.603 PERFORMANCE STANDARDS FOR USTS CONSTRUCTED OF STEEL AND CLAD OR JACKETED WITH A NON-CORRODIBLE MATERIAL: If a UST is constructed of steel and

clad or jacketed with a non-corrodible material, owners and operators shall meet the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

A. *Underwriters*

Laboratories Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks";

B. *Steel Tank Institute*

ACT-100® Specification F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks";

C. *Steel Tank Institute*

ACT-100-U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or

D. *Steel Tank Institute*

Specification F922, "Specification for Permatank®".
[20.5.106.603 NMAC - N, 07/24/2018]

20.5.106.604 PERFORMANCE STANDARDS FOR METAL USTS WITHOUT CORROSION PROTECTION:

If a UST is constructed of metal without additional corrosion protection measures, owners and operators shall only install the tank at a site that is approved in writing in advance of installation by a corrosion expert not to be corrosive enough to cause the UST to have a release due to corrosion during its operational life. Owners and operators shall maintain records that demonstrate compliance with this paragraph for the remaining life of the tank.

[20.5.106.604 NMAC - N, 07/24/2018]

20.5.106.605 INSTALLATION OF UST SYSTEMS:

A. Owners and operators shall properly install all USTs and piping:

(1) in

accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; and

(2) in

accordance with the manufacturer's instructions.

B. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1)

American Petroleum Institute RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";

(2) *Petroleum*

Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

(3) *National*

Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages".

[20.5.106.605 NMAC - N, 07/24/2018]

20.5.106.606 SECONDARY CONTAINMENT FOR UST SYSTEMS:

A. Owners and operators shall install secondary containment as follows:

(1) for any new or replaced UST system;

(2) for any new or replaced dispenser system.

A dispenser system is considered replaced when both the dispenser and the equipment needed to connect the dispenser to the underground storage tank system are installed at a UST facility. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping. Under-dispenser containment shall allow for access to the components in the containment

system for visual inspections; and
 (3) for any UST piping replaced after April 4, 2008.

B. Owners and operators shall design, provide project drawings for, and construct the entire new UST system with the secondary containment system in compliance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. The project drawings shall be approved in advance by the department. The secondary containment system shall:

(1) include all tanks, piping, dispenser systems, and all containment sumps for any piping and ancillary equipment that routinely contains regulated substances;

(2) include containment sumps, including under-dispenser containment, transition sumps, and containment sumps for submersible turbine pumps, that are liquid-tight on their sides, bottoms, and at any penetrations; and

(3) be interstitially monitored in accordance with the requirements in 20.5.108 NMAC.

C. If owners and operators:

(1) replace a UST, they shall install a double-walled tank with an inner and outer barrier and a release detection system that meets the requirements of 20.5.108 NMAC;

(2) replace a dispenser system, they shall install, in accordance with manufacturer's recommendations, an under-dispenser containment system that shall be hydrostatically tested and approved by the department prior to use; types of under-dispenser containment systems include, but are not limited to, dispenser liners, containment sumps, dispenser pans and dispenser sump liners; or

(3) replace piping, they shall install only double-walled piping with an inner and outer barrier and a release detection system that meets the requirements

of 20.5.108 NMAC for the replaced piping.

D. Owners and operators shall use one or more of the following to comply with secondary containment requirements:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *American Petroleum Institute RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(3) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";* or

(4) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages".*

E. The secondary containment requirements of this section shall not apply to:

(1) existing USTs in a manifolded system (as secondary containment is only required for a new or replaced UST in a manifolded system);

(2) repairs meant to restore a UST, piping or dispenser system to operating condition;

(3) piping runs that are not new or replaced for USTs with multiple piping runs;

(4) suction piping that meets the requirements of Subsection B of 20.5.108.813 NMAC; and

(5) non-pressurized piping that manifolds two or more underground tanks together, such as a siphon piping system; [20.5.106.606 NMAC - N, 07/24/2018]

20.5.106.607 PERFORMANCE STANDARDS FOR EXISTING UST SYSTEMS:

A. All existing UST systems (installed on or before December 22, 1988), by the effective date of these regulations, must have

complied with one of the following requirements:

(1) new UST performance standards in 20.5.106 NMAC;

(2) upgrade requirements in Subsection B of 20.5.106.607 NMAC; or

(3) closure requirements in 20.5.115 NMAC.

B. UST upgrading requirements. Owners and operators must have upgraded existing steel USTs by the effective date of these regulations to meet one of the following requirements in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Steel USTs that have not been upgraded by the effective date of these regulations shall be immediately permanently closed in accordance with 20.5.115 NMAC.

(1) Internal lining.

(a) USTs upgraded by internal lining must meet the following:

(i) the lining was installed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory that was approved in advance by the department, and

(ii) within 10 years after installation of internal lining and every five years thereafter, the lined UST is required to be internally inspected in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, or manufacturer's recommendation, approved in advance by the department.

(b) One of the following shall be used to comply with internal lining upgrading requirements:

(i) *National Leak Prevention Association Standard 631, Chapter B, "Future Internal Inspection Requirements for*

Lined Tanks";

(ii) *American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks"*; or

(iii) *Ken Wilcox Associates Recommended Practice, "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera"*.

(c) Owners and operators shall permanently close USTs in accordance with the requirements of 20.5.115 NMAC if the internal lining is not performing in accordance with the original design specifications and cannot be repaired in accordance with one of the following codes:

(i) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"*;

(ii) *American Petroleum Institute Recommended Practice RP 2200, "Repairing Hazardous Liquid Pipelines"*;

(iii) *American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks"*;

(iv) *National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"* or;

(v) *National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks"*.

(2) Cathodic protection. USTs upgraded by cathodic protection shall meet the requirements of 20.5.106.602 NMAC and owners and operators must have ensured the integrity of the tank by:

(a) performing internal inspections and assessments to ensure that the tank was structurally sound and free of corrosion holes prior to installing the

cathodic protection system; or

(b) if the tank had been installed for less than 10 years, by either having monitored monthly for releases in accordance with 20.5.108 NMAC or by having assessed for corrosion holes by conducting two tightness tests that met the requirements of 20.5.108 NMAC and that were approved in advance by the department. Owners and operators must have conducted the first tightness test prior to installing the cathodic protection system. Owners and operators must have conducted the second tightness test between three and six months following the first operation of the cathodic protection system.

(c) Owners and operators shall use one or more of the following to comply with cathodic protection upgrade requirements:

(i) *Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® USTs"*;

(ii) *NACE International Standard Practice SP0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection"*; or

(iii) *American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"*.

(3) Internal lining combined with cathodic protection. USTs upgraded by internal lining combined with cathodic protection must have met the following:

(a) the lining was installed in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, as follows:

(i) *National Leak Prevention Association Standard 631, Chapter B, "Future Internal Inspection Requirements for*

Lined Tanks";

(ii) *American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks"*;

(iii) *National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"*, or

(iv) *National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks"*; and

(b) the cathodic protection meets the requirements of 20.5.106.602 NMAC and has complied with one of the following:

(i) *Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® USTs"*; or

(ii) *NACE International Standard Practice SP0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"*; or

(iii) *American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"*.

C. Piping upgrade requirements. Owners and operators shall cathodically protect and upgrade metal piping in existing UST systems that routinely contain regulated substances and are in contact with an electrolyte, such as soil, to meet the requirements of 20.5.106.609 NMAC or 20.5.106.610 NMAC.

D. Spill and overfill prevention equipment. Owners and operators shall comply with the spill and overfill prevention requirements in 20.5.106.613 NMAC. Owners and operators of existing UST systems who installed oil/water separators to meet spill prevention requirements shall discontinue their use in meeting these requirements and shall install

new spill prevention equipment that meets the requirements in Subsection F of 20.5.106.613 NMAC no later than three years after the effective date of these regulations.

E. Owners and operators of existing fiberglass reinforced plastic UST systems may install an internal lining in order to address compatibility issues in accordance with *Fiberglass Tank and Pipe Institute Recommended Practice T-95-1, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks"*. [20.5.106.607 NMAC - N, 07/24/2018]

20.5.106.608 GENERAL PERFORMANCE STANDARDS FOR PIPING:

A. Owners and operators shall properly design and construct new piping, provide project drawings, initially test piping, and ensure that any steel portion of piping that routinely contains regulated substances and is in contact with an electrolyte, such as soil or water, shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) third party certification from a nationally recognized laboratory;
- (2) *American Society of Mechanical Engineering Standard B31.3, "Process Piping"*;
- (3) *American Society of Testing and Materials A53, "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless"*;
- (4) *American Society of Testing and Materials A106, "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service"*; or
- (5) *American Society of Testing and Materials A135, "Standard Specification for*

Electric-Resistance-Welded Steel Pipe".

B. Owners and operators shall ensure that piping is compatible with any regulated substance conveyed in accordance with 20.5.107.708 NMAC.

C. Owners and operators shall protect all piping from impact, settlement, vibration, expansion, corrosion, and damage by fire.

D. Owners and operators shall install a containment sump at any point where piping transitions from above the surface of the ground to below the ground surface.

E. If owners and operators install more than one type of piping at an underground storage tank system, then owners and operators shall comply with the requirements applicable to each type of piping for that run of piping. [20.5.106.608 NMAC - N, 07/24/2018]

20.5.106.609 PERFORMANCE STANDARDS FOR PIPING CONSTRUCTED OF NON-CORRODIBLE MATERIAL:

A. If owners and operators construct or operate piping of fiberglass-reinforced plastic or flexible piping, the piping shall:

- (1) be completely underground;
- (2) be within secondary containment that includes a release detection system that meets the requirements of 20.5.108 NMAC;
- (3) have a suitable cover approved by the piping manufacturer; or
- (4) have equivalent protection approved by the piping manufacturer and approved by the department prior to installation.

B. Owners and operators shall ensure that the piping meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and that the piping is

approved by the manufacturer for the application for which it is to be used. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *Underwriters Laboratories Standard 971, "Standard for Nonmetallic Underground Piping for Flammable Liquids"*; or
- (2) *Underwriters Laboratories of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids"*. [20.5.106.609 NMAC - N, 07/24/2018]

20.5.106.610 PERFORMANCE STANDARDS FOR STEEL PIPING FOR UST SYSTEMS:

A. If owners and operators construct or operate piping of steel for a UST system, owners and operators shall:

- (1) coat the piping with a suitable dielectric material;
- (2) field-install a cathodic protection system designed by a corrosion expert; and
- (3) design any impressed current system to allow ready determination of current operating status as required in Subsection C of 20.5.107.705 NMAC.

B. Owners and operators shall ensure that the piping meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and that the piping is approved by the manufacturer for the application for which it is to be used. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"*;
- (2) *Underwriters Laboratories Subject*

971A, "Outline of Investigation for Metallic Underground Fuel Pipe";

(3) *Steel Tank*

Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems";

(4) *NACE*

International Standard Practice SP0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";
or

(5) *NACE*

International Standard Practice SP0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".

C. If owners and operators construct piping of steel for a UST system without additional corrosion protection measures, owners and operators shall only install the piping at a site that is approved, in writing, in advance of installation, by a corrosion expert, to not be corrosive enough to cause the piping to have a release due to corrosion during its operational life. Owners and operators shall maintain records that demonstrate compliance with this requirement for the remaining life of the piping.

D. If owners and operators install or operate steel piping above ground that connects to an emergency generator or loading rack, they shall:

(1) meet the requirements in Subsection D of 20.5.106.608 NMAC;

(2) meet the requirements in Subsection A of 20.5.106.610 NMAC; and

(3) meet the requirements in 20.5.109.915 NMAC for the above ground steel portion of the piping.

[20.5.106.610 NMAC - N, 07/24/2018]

20.5.106.611 UNDERGROUND STORAGE TANK SYSTEMS AT MARINAS:

A. Owners and operators of underground storage

tank systems at marinas shall install an automatic break-away device to shut off flow of fuel from on-shore piping, which shall be located at the connection of the on-shore piping and the piping leading to the dock. Owners and operators shall install another automatic break-away device to shut off flow of fuel located at any connection between flexible piping and hard piping on the dispenser system and dock. The automatic break-away devices shall be easily accessible, and their location shall be clearly marked.

B. Owners and operators of underground storage tank systems at marinas shall electrically isolate dock piping where excessive stray electrical currents are encountered.

C. Owners and operators of underground storage tank systems at marinas shall protect piping from stress due to tidal action.

D. Owners and operators shall use *Petroleum Equipment Institute Publication RP1000, "Recommended Practices for the Installation of Marina Fueling Systems"*, or, if applicable, the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

[20.5.106.611 NMAC - N, 07/24/2018]

20.5.106.612 VENTING FOR UNDERGROUND STORAGE TANK SYSTEMS:

A. Owners and operators shall design and construct venting for all underground storage tank systems, following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

B. Vent pipes that are provided for normal tank venting shall be located so that the discharge point is outside of buildings higher than the fill pipe opening. Vent pipes shall be installed not less than 15 feet from power ventilation air intake devices

and not less than five feet from a building opening. Vent outlets and devices shall be designed and installed to minimize blockage.

C. Types of vent pipes.

(1) Vent pipes that are provided for normal tank venting shall extend at least 12 feet above ground level.

(2) If attached to a structure, vent pipes shall extend at least 5 feet above the highest projection of the canopy or roof.

(3) Vent pipes for normal tank venting shall be of appropriate size for the capacity and operating conditions of the tank.

D. Owners and operators shall use one of more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(3) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";*

(4) *Underwriters Laboratories Standard 142, "Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids";* or

(5) *International Code Council, "International Fire Code".*

[20.5.106.612 NMAC - N, 07/24/2018]

20.5.106.613 SPILL AND OVERFILL PREVENTION:

A. Except as provided in subsection B of this section, to prevent spilling and overfilling associated with transfers of regulated substances to underground storage tank systems, owners and operators shall use the following spill and overfill prevention equipment:

(1) spill prevention equipment that

will prevent release of regulated substances to the environment when the transfer hose is detached from the fill pipe; and

(2) overflow prevention equipment for USTs that will:

(a) automatically shut off flow into the tank when the tank is no more than ninety-five percent full; or

(b) alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level audible alarm.

B. Owners and operators are not required to use the spill and overflow prevention equipment specified in Subsection A of this section if approved in writing in advance by the department where:

(1) alternative equipment is used that is determined by the department to be no less protective of public health, safety and welfare and the environment than the equipment specified in Paragraphs (1) and (2) of Subsection A of this section; or

(2) the underground storage tank system is filled by transfers of no more than 25 gallons at one time;

C. Flow restrictors or ball float valves used in vent lines shall not be used as overflow prevention equipment for USTs when overflow prevention is installed or replaced after [the effective date of these rules.

D. Spill and overflow prevention equipment must be periodically tested or inspected in accordance with 20.5.107.704 NMAC.

E. Owners and operators of UST systems with remote fill piping shall install a trap door or equivalent device and shall meet the following:

(1) Flow restrictors or ball float valves shall not be installed or used on a UST system with a remote fill pipe.

(2) Owners and operators who install or modify

remote fill piping shall install a containment sump where remote fill piping connects to the UST.

F. Overflow prevention and spill prevention equipment for new UST systems shall be either listed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory for use with flammable and combustible liquids.

G. Owners and operators shall not install oil/water separators to meet spill prevention requirements for UST systems. [20.5.106.613 NMAC - N, 07/24/2018]

20.5.106.614 LOADING RACKS:

A. Owners and operators who install loading racks shall design and construct them in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements in this section:

(1) *American Petroleum Institute Standard 2610, "Design, Construction, Operation, Maintenance & Inspection of Terminal and Tank Facilities";*

(2) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(3) *International Code Council, "International Fire Code";* or

(4) *Petroleum Equipment Institute RP 800, "Recommended Practices for Installation of Bulk Storage Plants."*

B. Owners and operators of aviation fuel storage tank systems who install loading racks shall comply with *National Fire Protection Association Standard 407, "Standard for Aircraft Fuel Servicing"*.

C. Owners and operators shall install a containment

system that is designed to contain all releases of regulated substances that occur during loading and unloading operations at the loading rack. For all loading racks, owners and operators shall install either:

(1) a drainage system, or secondary containment system meeting the requirements of 20.5.106 NMAC, with a catchment basin capable of containing the largest compartment of a tank car or tanker truck that is loaded or unloaded at the facility; or

(2) a drainage system that is connected to a treatment facility designed to receive releases of regulated substances that occur during loading and unloading operations.

D. Owners and operators shall ensure that loading racks are at least 25 feet from ASTs containing class I liquids (such as gasoline), buildings, and property lines. Owners and operators shall ensure that loading racks are at least 15 feet from ASTs containing class II or class III liquids.

[20.5.106.614 NMAC - N, 07/24/2018]

20.5.106.615 REQUIRED NOTIFICATION PRIOR TO INSTALLATION:

To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the installation of an underground storage tank system are to take place. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

A. For installations, the term "critical junctures" means:

(1) preparation of the excavation immediately prior to receiving backfill and a UST or piping for a UST;

(2) installation of any tank pad, vault, or secondary containment for a storage tank system;

(3) setting of a storage tank and piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(4) placing a regulated substance in the tank;

(5) any time during the installation in which components of piping are connected;

(6) all pressure testing or integrity testing of an underground storage tank system, including associated piping, performed during the installation; and

(7) completion of backfill and filling of the excavation.

B. Owners, operators and certified tank installers shall give at least 30 days written notice before the installation of an underground storage tank system. At a minimum, the installation notice shall contain the following information:

(1) date the form is completed;

(2) facility name, facility ID number, address (with county), and telephone number;

(3) owner name, owner ID number, address, and telephone number;

(4) contractor name, address, and telephone number;

(5) tank details (number and size, type and materials, products to be stored);

(6) piping material and type of leak detection;

(7) type of spill and overfill prevention;

(8) type of corrosion protection (sacrificial, impressed current, or none with explanation why corrosion protection not required);

(9) method of leak detection (statistical inventory reconciliation, automatic tank gauges, visual, vapor monitoring, interstitial monitoring, inventory control with tightness testing);

(10) approximate date installation will take place; and

(11) the signature of the owner or owner's

representative filling out the form.

C. Owners, operators and certified tank installers shall provide required project drawings with the 30 day written notice.

D. In addition to the written notice described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure.

In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

E. If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.106.615 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for notification of installation. The form is available on the petroleum storage tank bureau's pages on the department's website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.106.616 REQUIRED CERTIFICATIONS:

A. Certification of compliance. All owners and operators of new underground storage tank systems shall certify in the registration form required by 20.5.102 NMAC compliance with the following requirements:

(1) installation of tanks and piping in 20.5.106.605 NMAC for UST systems;

(2) cathodic protection of steel tanks and piping in 20.5.106.602 NMAC and 20.5.106.610 NMAC for UST systems, or 20.5.106.604 NMAC for UST systems;

(3) financial responsibility under 20.5.117 NMAC; and

(4) release detection in 20.5.108 NMAC.

B. Installer certification. All owners and operators of new underground storage tank systems shall ensure that the installer certifies in the registration form required by 20.5.102 NMAC that the methods used to install the storage tanks and piping comply with the requirements in 20.5.106 NMAC.

C. Certification of installation. Owners and operators shall demonstrate compliance with the installation standards in 20.5.106 NMAC. Owners and operators shall provide a certification of installation on the UST registration form required by 20.5.102 NMAC, which asserts that all of the following methods of certification, testing, and inspection were used to demonstrate compliance with installation requirements of the UST system:

(1) the installer has been certified by the tank and piping manufacturers;

(2) the installer has been certified or licensed as required in 20.5.105 NMAC; and

(3) the installer has notified, submitted required documentation to, and the installation has been inspected by the department; and

(4) all work listed in the manufacturer's installation checklists has been completed.

[20.5.106.616 NMAC - N, 07/24/2018]

20.5.106.617 ALTERNATE METHODS:

A. If owners and operators want to install tanks, piping, underground storage tank systems, spill and overfill equipment, secondary containment, or any other requirement of this part with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting

documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

B. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment. [20.5.106.617 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to request approval of an alternate method. The form is available on the petroleum storage tank bureau's pages on the department's website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

HISTORY OF 20.5.106 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.
 EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and

Upgraded UST Systems: Design, Construction, and Installation, filed 9/12/88
 EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design, Construction, and Installation, filed 8/4/89
 EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design, Construction, and Installation, filed 6/12/90

History of Repealed Material: 20 NMAC 5.4, Underground Storage Tanks, New and Upgraded UST Systems: Design, Construction, and Installation (filed 2/27/97), repealed 8/15/03.
 20.5.4 NMAC, Petroleum Storage Tanks, New and Upgraded Tank Systems: Design, Construction and Installation (filed 7/16/03) repealed 4/4/08.
 20.5.4 NMAC, Petroleum Storage Tanks, New and Upgraded Tank Systems: Design, Construction and Installation (filed 4/4/08) repealed 07/24/2018.

Other History:
 EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design, Construction, and Installation (filed 6/12/90), renumbered, reformatted and replaced by 20 NMAC 5.4, New and Upgraded UST Systems: Design, Construction, and Installation, effective 11/5/95.
 20 NMAC 5.4, Underground Storage Tanks, New and Upgraded UST Systems: Design, Construction, and Installation (filed 10/6/95) replaced by 20 NMAC 5.4, New and Upgraded UST Systems: Design, Construction, and Installation, effective 4/1/97.
 20 NMAC 5.4, Underground Storage Tanks, New and Upgraded UST Systems: Design, Construction, and Installation (filed 2/27/97) was renumbered, reformatted and replaced by 20.5.4 NMAC, New and Upgraded Tank Systems: Design, Construction and

Installation, effective 08/15/03.
 20.5.4 NMAC, Petroleum Storage Tanks, New and Upgraded Tank Systems: Design, Construction and Installation (filed 8/15/03) was replaced by 20.5.106 NMAC, Petroleum Storage Tanks, New and Upgraded Underground Storage Tank Systems: Design, Construction and Installation, effective 7/24/2018.

**ENVIRONMENT
 DEPARTMENT
 RESOURCE PROTECTION
 DIVISION**

**TITLE 20
 ENVIRONMENTAL
 PROTECTION
 CHAPTER 5 PETROLEUM
 STORAGE TANKS
 PART 107 GENERAL
 OPERATING REQUIREMENTS
 FOR UNDERGROUND STORAGE
 TANK SYSTEMS**

20.5.107.1 ISSUING AGENCY: New Mexico Environmental Improvement Board. [20.5.107.1 NMAC - N, 07/24/2018]

20.5.107.2 SCOPE: This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance. [20.5.107.2 NMAC - N, 07/24/2018]

20.5.107.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.107.3 NMAC - N, 07/24/2018]

20.5.107.4 DURATION:

Permanent.

[20.5.107.4 NMAC - N, 07/24/2018]

20.5.107.5 EFFECTIVE

DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.107.5 NMAC - N, 07/24/2018]

20.5.107.6 OBJECTIVE:

The purpose of 20.5.107 NMAC is to ensure that the operation and maintenance of storage tanks will prevent releases and to protect the public health, safety and welfare and the environment of the state.

[20.5.107.6 NMAC - N, 07/24/2018]

20.5.107.7 DEFINITIONS:

The definitions in 20.5.101 NMAC apply to this part.

[20.5.107.7 NMAC - N, 07/24/2018]

20.5.107.8 to 20.5.107.699

[RESERVED]

20.5.107.700 OPERATION AND MAINTENANCE OF UNDERGROUND STORAGE TANK SYSTEMS:

Owners and operators shall properly maintain all tanks, piping, secondary containment and other associated equipment required in 20.5.106 NMAC, and shall ensure that all tanks, piping, secondary containment and other associated equipment for all storage tank systems are fully operational at all times. Owners and operators shall notify the department in accordance with 20.5.118 NMAC if a visual inspection, other inspection or testing conducted in accordance with this part or 20.5.108 NMAC indicates that a release may have occurred.

A. Owners and operators shall mark fill port lids of USTs in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or

independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *American Petroleum Institute RP 1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gas Dispensing Facilities and Distribution Terminals"*. Owners and operators shall clearly label the contents of all storage tanks.

B. If any steel piping installed in a trench is used in a UST system, owners and operators shall visually inspect the trench monthly. Owners and operators shall draw off any liquid that has accumulated in the trench within one week of the accumulation, and shall remove any other debris that has accumulated inside the trench.

Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. If a basin sump is located in the trench, owners and operators shall keep the basin sump free of accumulated liquid and debris. Owners and operators shall not install any valves in any basin sump in a piping trench.

[20.5.107.700 NMAC - N, 07/24/2018]

20.5.107.701 OPERATIONS AND MAINTENANCE

PLAN: Owners and operators of all storage tank systems shall adopt and implement a written operations and maintenance plan, which they shall keep at the facility for the life of the storage tank system. Owners and operators of unmanned storage tank systems may keep the operations and maintenance plan at an alternate location as long as it is made readily available to the department upon request. The operations and maintenance plan shall be as specific as possible for each facility and shall include the

piping and ancillary equipment that routinely contains regulated substances, or controls the flow of regulated substances. Owners and operators may use, by reference, operational and maintenance guidance from the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. Owners and operators who reference a current edition of an industry standard or code of practice shall maintain a copy of the code or standard they reference. Owners and operators shall not implement the plan until it has been approved by the department.

A. At a minimum, the operations and maintenance plan shall include the following:

(1) a detailed plan showing inspections, operations, testing and maintenance to be done on a daily, monthly, quarterly and annual basis; the plan shall include tank charts for each tank, a description of how owners and operators properly dispose of regulated substances spilled at the facility, and any water or soil removed from any part of the storage tank system where there is any indication it might be or have been contaminated with a regulated substance;

(2) a description of periodic operation and maintenance walk-through inspections in accordance with 20.5.107.707 NMAC; and

(3) responses to emergency situations; this information shall be readily accessible at the facility; responses to emergency situations shall include the following:

(a) the location of equipment to be shut down during an emergency and how to safely perform these tasks;

(b) actions to be taken in the event of a fire, flooding, a spill, or a release of regulated substances;

(c) a site diagram; and

(d) a list of whom to notify or call during or after an emergency situation.

B. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems"*,

(2) *U.S. Environmental Protection Agency #510-R-05-001, "UST Systems: Inspecting and Maintaining Sumps and Spill Buckets"*; or

(3) *U.S. Environmental Protection Agency #510-R-05-002, "Operating and Maintaining Underground Storage Tank Systems: Practical Help and Checklists"*.

C. Owners and operators may submit to the department for approval an alternate plan which contains all the information requested in this section.

D. Owners and operators of storage tank systems that have been placed in temporary closure in compliance with 20.5.115.1501 NMAC shall not be required to have an operations and maintenance plan, unless one or both of the following conditions is present:

(1) the storage tank contains greater than one inch of regulated substance; or

(2) the storage tank system has steel components that are in contact with an electrolyte, such as soil, water or concrete. [20.5.107.701 NMAC - N, 07/24/2018]

20.5.107.702 OPERATION, REPAIR, AND MAINTENANCE OF SECONDARY

CONTAINMENT FOR USTS:

A. Owners and operators of underground storage tank systems shall operate, maintain and repair secondary containment in accordance with the manufacturer's instructions or specifications, or with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *U.S. Environmental Protection Agency #510-R-05-001, "UST Systems: Inspecting and Maintaining Sumps and Spill Buckets"*; or

(2) *U.S. Environmental Protection Agency #510-R-05-002, "Operating and Maintaining Underground Storage Tank Systems: Practical Help and Checklists"*;

(3) *National Leak Prevention Association Publication RP823, "Standard for Preventative Maintenance, Repair, and In-situ Construction of Petroleum Sumps"*.

B. Owners and operators shall draw off liquid that has accumulated in the secondary containment, including all sumps, within one week of any accumulation of liquid, and shall remove any other debris that has accumulated inside the secondary containment. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen.

C. Under-dispenser containment must allow for access to the components in the containment system for visual inspections in accordance with 20.5.107.707 NMAC.

D. Under-dispenser containment for UST systems installed after April 4, 2008 shall be maintained to meet requirements in 20.5.106.606 NMAC.

E. Owners and operators shall operate, maintain, and repair containment sumps on UST systems in order to prevent any leaks or spills from escaping the containment sumps. [20.5.107.702 NMAC - N, 07/24/2018]

20.5.107.703 OPERATION, REPAIR, AND MAINTENANCE OF VENTING SYSTEMS:

Owners and operators shall operate, maintain and repair venting systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. At least monthly, owners and operators shall check emergency vents to ensure they are operational. The following shall be used to comply with this requirement: *National Fire Protection Association Standard 91, "Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Particulate Solids"*. [20.5.107.703 NMAC - N, 07/24/2018]

20.5.107.704 OPERATION AND MAINTENANCE OF SPILL AND OVERFILL PREVENTION:

Owners and operators shall ensure that releases due to spilling or overfilling do not occur.

A. Owners and operators shall ensure that the volume available in a tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. Owners and operators shall comply with the transfer procedures described in the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *National*

Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";

(2)

International Code Council, "International Fire Code";

(3) *Petroleum*

Equipment Institute Publication RP600, "Recommended Practices for Overfill Prevention for Shop-Fabricated Aboveground Tanks"; or

(4)

American Petroleum Institute Standard 2350, "Overfill Protection for Storage Tanks in Petroleum Facilities".

B. For additional guidance on Subsection A, see the following:

(1) *National*

Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids";

(2) *American*

Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles";

(3) *American*

Petroleum Institute Bulletin 1621, "Recommended Good Practices for Bulk Liquid-Loss Control in Service Stations"; or

(4) *National*

Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code".

C. Owners and operators of UST systems shall ensure that spill prevention equipment required in 20.5.106.613 NMAC is liquid tight, maintained, and fully operational at all times. In order to ensure the equipment meets these requirements, owners and operators shall, no later than three years after the effective date of these rules, meet the following requirements:

(1) Single

walled spill prevention equipment shall be tested every three years either by a vacuum, pressure, or liquid test method that meets one of the following:

(a)

the equipment manufacturer's

developed and published testing requirements; or

(b)

Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities".

(2) Single

walled spill prevention equipment installed in a containment sump shall be tested every three years or the containment sump shall be tested every three years. Testing shall either be by a vacuum, pressure, or liquid method that meets one of the following:

(a)

the equipment manufacturer's developed and published testing requirements; or

(b)

Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities".

(3) Double

walled spill prevention equipment that is periodically monitored every 30 days shall have records of the monitoring maintained in accordance with the requirements in 20.5.107.714 NMAC. If monthly monitoring is not being conducted or records of the monitoring cannot be produced, a test in accordance with Subsection C of this section shall be conducted within the next thirty days of discontinuing periodic monitoring of the equipment.

(4)

Single walled containment sumps installed to meet spill prevention requirements shall be tested every three years. Testing shall be by a vacuum, pressure, or liquid method that meets one of the following:

(a)

the equipment manufacturer's developed and published testing requirements; or

(b)

Petroleum Equipment Institute RP 1200, "Recommended Practices

for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities".

(5) Double

walled containment sumps that are installed to meet spill prevention requirements shall either be tested every three years or monitored as follows:

(a)

Testing shall be by a vacuum, pressure, or liquid method that meets one of the following:

(i)

the equipment manufacturers developed and published testing requirements; or

(ii)

Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities";

(b)

Monitoring shall be performed either continuously or monthly with a sensor or visual inspection as follows:

(i)

continuous monitoring by liquid, pressure, or vacuum shall be done electronically and shall activate an alarm when liquid is detected in the interstice of the sump;

(ii)

monthly monitoring with a sensor shall be conducted at least every 30 days and in accordance with either the manufacturer's instructions or the current edition of a national code or standard;

(iii)

monthly monitoring by visual inspection may be used if a leak from the inner wall of the sump can be detected by a visual check of the interstice;

(6)

Containment sumps installed prior to the effective date of these regulations shall be tested in accordance with Paragraph (2) of Subsection C of this section prior to the beginning of monthly monitoring, if applicable;

(7)

Sensors used for monthly monitoring of spill prevention equipment or containment sumps associated with spill prevention equipment shall be functionality tested annually in accordance with the requirements in Subsection B of 20.5.108.808 NMAC;

(8)

If evidence is found during the monthly monitoring that containment sumps or spill prevention equipment are no longer liquid tight, owners and operators shall have the equipment repaired or replaced in accordance with the requirements in 20.5.107.709 NMAC;

(9) A

report shall be produced which includes the results of any vacuum, pressure, or liquid testing conducted on spill prevention equipment and the report shall be submitted to the department in accordance with the requirements in 20.5.107.715 NMAC and maintained in accordance with the requirements in 20.5.107.714 NMAC.

D. Spill prevention equipment that either fails when tested or is found to be damaged during periodic monitoring shall be repaired or replaced in accordance with 20.5.107.709 NMAC.

E. Owners and operators of UST systems shall ensure that overfill prevention equipment required in 20.5.106.613 NMAC is maintained and fully operational at all times. Owners and operators shall either use the methods and procedures for the inspection as listed in *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities,"* or those developed and published by the equipment manufacturer. In order to ensure the equipment meets these requirements, owners and operators shall, no later than

three years after the effective date of these regulations, and every three years thereafter, have the overfill prevention equipment inspected or tested and shall meet the following:

(1)

The inspection shall verify the equipment meets the requirements in 20.5.106.613 NMAC, and if the equipment fails to meet these requirements, it shall be repaired or replaced. The repair or replacement shall be in accordance with 20.5.107.709 NMAC.

(2)

Prior to the inspection of flow restrictors on vent lines on existing USTs, either a vacuum or pressure decay test shall be conducted in order to ensure all of the penetrations on top of the tank are vapor tight. If the tank fails the test it shall be repaired prior to placing the tank back into service.

(3)

Flow restrictors on vent lines that are found to be inoperable during the inspection shall be replaced with different type of overfill prevention equipment. Flow restrictors shall not be installed or replaced with another flow restrictor on or after the effective date of these regulations.

(4)

Drop tube style overfill prevention equipment shall be removed from the tank and inspected for operability.

(5)

If more than one type of overfill prevention equipment is installed on a UST, owners and operators shall ensure that none of them will interfere with the proper operation of any of the others.

(6)

A report on tests and inspections of overfill prevention equipment shall be produced which meets the requirements in Subsection D of 20.5.107.715 NMAC, and the report shall be maintained in accordance with the requirements in 20.5.107.714 NMAC. The report shall be submitted to the

department in accordance with the requirements in Subsections B and C of 20.5.107.715 NMAC.

F. Owners and operators shall report, investigate, and clean up any spills and overfills in accordance with 20.5.118 NMAC.

G. Owners and operators of a storage tank system that meets the requirements for temporary closure where the tank is empty as defined in 20.5.115.1501 NMAC shall not be required to periodically test the spill and overfill prevention equipment.

H. Owners and operators of storage tank systems shall ensure that tests of all spill and overfill prevention equipment as required in this section are performed by a qualified tester. The requirements for testers can be found in 20.5.105 NMAC. [20.5.107.704 NMAC - N, 07/24/2018]

20.5.107.705 OPERATION AND MAINTENANCE OF CORROSION PROTECTION:

Owners and operators of metal storage tank systems with any metal tank or piping with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented until the storage tank system is permanently closed pursuant to 20.5.115 NMAC.

A. Owners and operators shall operate and maintain corrosion protection systems to continuously provide corrosion protection to all metal components of the storage tank system that routinely contain regulated substances and are in contact with an electrolyte, to include, but not limited to, soil or water. Owners and operators shall operate and maintain corrosion protection systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following

to comply with the requirements of this section:

(1) *Steel Tank Institute, "STI-P3 Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";*

(2) *Underwriters Laboratories Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks";*

(3) *Underwriters' Laboratories of Canada CAN4-S603-14-ER1, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids";*

(4) *Underwriters' Laboratories of Canada CAN4-603.1, "Standard for External Corrosion Protection Systems for Underground Steel Tanks for Flammable and Combustible Liquids";*

(5) *Underwriters' Laboratories of Canada CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems";*

(6) *NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection";* or

(7) *Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."*

B. Owners and operators shall ensure that all storage tank systems equipped with cathodic protection are inspected for proper operation by a qualified corrosion expert in accordance with the following requirements:

(1) Frequency: owners and operators shall test all cathodic protection systems as follows:

(a) within six months of installation and at least every three years thereafter;

(b) within six months of a modification or repair; or

(c) another reasonable time frame approved in advance in writing by the department;

(2) Inspection criteria: the criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(3) Owners and operators of storage tank systems shall provide the department a report on the cathodic protection system test that includes the following:

(a) name of facility, facility address, and facility ID number;

(b) name of the technician who performed the test;

(c) certification of the technician in the type of test performed, including certification numbers, national association where the certification was obtained, and expiration date of the certification;

(d) description of cathodic protection system, for example impressed current, galvanic;

(e) description of storage tank system including tank ID number, product, capacity, tank type, piping, flex connectors;

(f) type of test conducted, such as: three-year test; test within six months of installation; test within six months after repair or modification; test within three months after failed test;

(g) whether all flex connectors or metal risers that routinely contain a regulated substance and are in contact with an electrolyte are protected from corrosion. If isolation boots, jackets, or other non-corrodible materials are used

to protect this equipment from corrosion, it shall be determined if they are still providing protection from corrosion.

(h) tester's pass/fail evaluation and actions to be taken after evaluation;

(i) facility drawing of the storage tank system and cathodic protection system, indicating location of test points on the storage tank system, cathodic protection test stations, and reference electrode placement; and

(j) description of cathodic protection system repair or modification.

(4) Owners and operators of storage tank systems shall provide the department a report on impressed current systems that includes all requirements listed in Paragraph (3) of Subsection B of this section and:

(a) rectifier manufacturer, model, serial number, and what the rectifier is rated for in direct current output voltage and amperage;

(b) rectifier tap settings, direct current output voltage and amperage, and hour meter readings;

(c) description of structure tested, contact point of test lead, and reference electrode placement;

(d) structure to soil potential with current applied in millivolts;

(e) structure to soil potential with current interrupted, instant OFF in millivolts;

(f) 100 millivolts polarization shift, end voltage and voltage change; and

(g) test results.

(5) Owners and operators of storage tank systems shall provide the

department a report on galvanic systems that includes all requirements listed in Paragraph (3) of Subsection B of this section and:

(a) description of structure tested, contact point of test lead, and reference electrode placement;

(b) structure to soil potential measured locally in millivolts;

(c) structure to soil potential measured remotely in millivolts; and

(d) test results.

(6) Owners and operators shall use one or more of the following to comply with the requirements of this section:

(a) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(b) *National Fire Protection Association Standard 30A "Code for Motor Fuel Dispensing Facilities and Repair Garages";*

(c) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems";*

(d) *American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";*

(e) *International Code Council, "International Fire Code";*

(f) *NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";*

(g) *NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";*

(h)

Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs";

(i) *NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection";* or

(j) *NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".*

C. Owners and operators shall inspect storage tank systems with impressed current cathodic protection systems every 60 days to ensure the equipment is running properly. Owners and operators shall record the date, time, readings and results of each inspection in a log kept at the facility, and indicate who performed each inspection.

D. Owners and operators shall monthly inspect any equipment or materials used to isolate metal components of UST systems and shall repair or replace equipment and materials used to meet corrosion protection requirements in this section.

E. For storage tank systems using cathodic protection, owners and operators shall maintain records of the operation of the cathodic protection in accordance with 20.5.107.714 NMAC to demonstrate compliance with the performance standards in this section. These records shall provide the following:

(1) the results of the last three inspections required in Subsection C of this section; and

(2) the results of testing from the last two inspections required in Subsection B of this section.

[20.5.107.705 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for the cathodic protection system test report required in Subsection B. The form is available on the Petroleum

Storage Tank Bureau's pages on the department website, or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.107.706 OPERATION AND MAINTENANCE OF CONTAINMENT SUMPS FOR UST SYSTEMS:

A. Owners and operators shall maintain all containment sumps (including but not limited to turbine sumps, under dispenser sumps, and transition sumps) and draw off liquid that has accumulated in the containment sumps within one week of the accumulation, and shall remove any other debris that has accumulated inside the containment sumps.

Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations.

B. Owners and operators shall maintain all containment sumps associated with interstitial monitoring of underground piping; the sumps shall be liquid tight and kept free of water.

C. Owners and operators of UST systems with single walled containment sumps associated with interstitial monitoring shall have the integrity of the sump tested no later than three years after the effective date of these regulations, and every three years thereafter, in accordance with the following:

(1) Hydrostatic or other test methods shall be conducted to ensure the containment sumps are liquid tight including at all penetrations in accordance with one of the following:

(a) the equipment manufacturers developed and published testing requirements;

(b) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and*

Secondary Containment Equipment at UST Facilities"; or

(c) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(2) Hydrostatic test methods using a test apparatus developed specifically for testing containment sumps shall ensure the containment sumps are liquid tight including at all penetrations and comply with one of the following:

(a) protocols developed by the manufacturer of the test apparatus and the certification as listed on <http://www.nwglde.org>, the web site of the national work group on leak detection evaluation; or

(b) protocols developed and published by the manufacturer of the containment sump; or

(c) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*; or

(3) A low liquid level hydrostatic test method may be conducted if all of the following conditions are met:

(a) test method used shall be in accordance with the following:

(i) the liquid level meets the third-party certification for the sensor installed in the sump;

(ii) the duration of the test shall be a minimum of one hour unless a different test period is specified by the containment sump manufacturer or in Item (iii) below;

(iii) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(b) either a hydrostatic test shall be conducted every 12 years in accordance with Paragraph (1) and (2) of Subsection C or a site check shall be conducted every 12 years in accordance with in Subsection B of 20.5.118.1801 NMAC.

(c) a sump sensor that automatically shuts off equipment associated with the sump and meets the requirements for placement and testing of sensors used for interstitial monitoring in Paragraph 2 of Subsection B of 20.5.108.811 NMAC;

(4) A low liquid level test per Paragraph (3) of this subsection shall not be conducted if the following conditions exist:

(a) a liquid is discovered in the sump or evidence is found that a liquid has been at a level equal to or higher than the lowest penetration in the sump then testing has to be conducted in accordance with Paragraph (1) of this subsection;

(b) sensors in containment sumps are discovered to be located higher than the lowest part of the sump a test shall be conducted in accordance with Paragraph (1) of this subsection and owners and operators shall report and investigate a suspected release in accordance with the requirements in 20.5.118 NMAC; or

(c) a site check conducted in accordance with Paragraph (3) of this subsection indicates there has been a release from the containment sump.

D. Owners and operators of UST systems with double-walled containment sumps associated with interstitial monitoring shall have the integrity of the sumps tested no later than three years after the effective date of these regulations, and every three years thereafter, in accordance with one of the following:

(1) interstices under vacuum, pressure, or brine filled, are continuously monitored by use of interstitial sensors or visually inspected every 30 days, and the monitoring records are maintained

in accordance with 20.5.107.714 NMAC. Owners and operators shall ensure that annual functionality testing or annual inspections of the monitoring equipment are conducted in accordance with 20.5.108.805 NMAC. Owners and operators who cannot demonstrate that the interstices of the containment sumps are continuously monitored or inspected every 30 days shall have the sumps tested in accordance with Subsection C above; or

(2) containment sumps with dry interstices that are not continuously monitored are integrity tested in accordance with Subsection C of this section.

E. All sensors and equipment used to monitor containment sumps shall be functionality tested annually in accordance with Subsection B of 20.5.108.805 NMAC.

F. A report shall be produced which includes the results of the testing, and the report shall be submitted in accordance with 20.5.107.715 NMAC and maintained in accordance with the requirements in 20.5.107.714 NMAC.

G. Owners and operators of storage tank systems shall ensure that tests of containment sumps as required in this section are performed by qualified testers. The requirements for testers can be found in 20.5.105 NMAC.

H. Owners and operators of storage tank systems shall dispose of water or other test media used in testing of components of petroleum storage tank systems, or any accumulated liquid with a visible sheen, and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. Owners and operators who temporarily store the test media or water on-site shall do so in accordance with all federal, state, and local statutes, ordinances, and regulations.

[20.5.107.706 NMAC - N, 07/24/2018]

20.5.107.707 PERIODIC

OPERATION AND MAINTENANCE WALK-THROUGH INSPECTIONS:

A. Owners and operators shall conduct walk-through inspections that, at a minimum, check equipment as specified below:

(1) For spill and overfill prevention equipment, every 30 days (exception: spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):

(a) visually check all spill and overfill prevention equipment for damage;

(b) remove liquid or debris;

(c) check for and remove obstructions in the fill pipe;

(d) check all fill and vapor caps to verify a tight seal; and

(e) for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and

(f) check overfill prevention equipment for proper operation and determine whether maintenance is required.

(2) For release detection equipment, every 30 days:

(a) check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and

(b) ensure records of release detection testing are reviewed and current.

(3) For containment sumps, every 30 days:

(a) visually check the containment sump for damage, liquid in or leaks into the containment area, and releases to the environment;

(b) remove liquid and debris from containment sumps; and

(c) for double walled sumps with interstitial monitoring, check for liquid or a leak in the interstitial area.

(4)

Annually: check hand held release detection equipment, such as, but not limited to, tank gauge sticks or groundwater bailers for operability and serviceability;

B. Owners and operators shall conduct these walk-through inspections in accordance with one of the following:

(1) *Petroleum Equipment Institute Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems";*

(2) the current edition of a national code of practice or standard developed by a nationally recognized association or independent testing laboratory that checks equipment included in Subsection A of 20.5.107.707 NMAC; or

(3) a checklist developed by the department.

C. Owners and operators must maintain records of operation and maintenance walkthrough inspections in accordance with 20.5.107.714 NMAC. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

[20.5.107.707 NMAC - N, 07/24/2018]

20.5.107.708

COMPATIBILITY: Owners and operators shall use a storage tank system made of or lined with materials that are compatible with the substance stored in the storage tank system.

A. Owners and operators must notify the department at least 30 days prior to changing the substance in any of their tanks to a regulated substance containing greater than ten percent ethanol, greater than twenty percent biodiesel, or any other regulated substance identified by the department.

B. In addition,

owners and operators with storage tank systems storing the regulated substances identified in Subsection A of this section must meet one of the following:

(1) demonstrate compatibility of the storage tank system, including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment. Owners and operators may demonstrate compatibility of the storage tank system by using one of the following options:

(a) certification or listing of storage tank system equipment or components by a nationally recognized, independent testing laboratory approved in advance by the department for use with the regulated substance stored; or

(b) equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer.

(2) for storage tank systems or system components that contain, but are not compatible with, one of the regulated substances listed in Subsection A of this section, or for those storage tank systems where compatibility cannot be determined, remove all regulated substances from the storage tank system by the effective date of these regulations and comply with one of the following:

(a) replace the storage tank system or system components in accordance with the requirements for a new storage tank system in 20.5.106 NMAC; or

(b) prior to putting the tank back in service, repair the storage tank system in accordance 20.5.107.702 NMAC and

comply with one of the following:

install an internal lining in the tank in accordance with the requirements in Subsection E of 20.5.106.607 NMAC to address compatibility issues; or

comply with tank or equipment manufacturer's instructions;

(c) change the regulated substance stored to one that is compatible with the storage tank system; or

(d) permanently close the storage tank system within 12 months of the effective date of these regulations in accordance with the permanent closure requirements in 20.5.115 NMAC; or

(3) use another option determined by the department to be no less protective of human health and the environment than the options listed in this subsection.

C. Owners and operators must maintain records documenting compliance with this section for as long as the storage tank system is used to store the regulated substance.

D. Owners and operators shall use the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department to comply with the compatibility requirements of this section. *American Petroleum Institute Recommended Practice RP 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"*, shall be used to comply with the requirements of this section as they pertain to storage of ethanol blends.

[20.5.107.708 NMAC - N, 07/24/2018]

(i) **20.5.107.709 REPAIRS, REPLACEMENTS AND MODIFICATIONS:** Owners and operators of a storage tank system shall ensure that repairs, replacements, and modifications will prevent releases due to structural failure or corrosion as long as the storage tank system is used to store regulated substances.

(ii) **A.** Determining whether repair, replacement or modification is necessary. Owners and operators shall determine whether a repair, replacement or modification to a storage tank system is necessary in consultation with a department inspector, after providing notice required by this part.

(1) If owners and operators are repairing, replacing or modifying piping of any kind that is connected to a storage tank, the determination shall be made during an on-site inspection that provides the inspector the opportunity to view the piping while it is exposed.

(2) If, during an on-site inspection, the inspector determines that:

(a) any steel piping connected to a tank indicates corrosion; or

(b) any non-corrodible piping connected to a tank shows signs of deterioration or failure;

(3) Then the owner and operator shall replace all piping connected to that tank, and shall inspect all other piping at the same facility that is made of the same material to determine its condition prior to returning the facility to operation.

B. Owners and operators shall properly conduct repairs, replacements and modifications to storage tank systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and in

accordance with the manufacturer's instructions and recommended practices. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"*;

(2) *American Petroleum Institute Recommended Practice RP 2200, "Repairing Hazardous Liquid Pipelines"*;

(3) *American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks"*;

(4) *National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks"*;

(5) *National Leak Prevention Association Standard 631, Chapter D, "Lining of Fiberglass Tanks for Compatibility and Repairs That Are Allowed"*;

(6) *National Leak Prevention Association Publication RP823, "Standard for Preventative Maintenance, Repair, and In-situ Construction of Petroleum Sumps"*;

(7) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages"*;

(8) *Petroleum Equipment Institute Publication RP200, "Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling"*;

(9) *American Society for Testing and Materials ES40, "Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection"*;

(10) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration Piping Systems"*;

(11) *American Society of Mechanical Engineering Standard B31.1, "Power Piping";*

(12) *International Code Council, "International Fire Code";*

(13) *Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks";*

(14) *NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection";*

(15) *Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks";*

(16) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for the Installation of Underground Storage Tank Systems for Motor Vehicle Fueling";*

(17) *Petroleum Equipment Institute Publication RP800, "Recommended Practices for Installation of Bulk Storage Plants";*

(18) *Petroleum Equipment Institute Publication RP1000, "Recommended Practices for the Installation of Marina Fueling Systems";*

(19) *Petroleum Equipment Institute Publication RP1300, "Recommended Practices for the Design, Installation, Service, Repair, and Maintenance of Aviation Fueling Systems";* or

(20) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems".*

C. Owners and operators shall tightness test a storage tank system that has been replaced, modified or repaired, prior to returning the system to service, in accordance with 20.5.108.804 NMAC and Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC except as provided below:

(1) the repaired or modified tank is internally inspected in accordance with the current edition of an industry standard or code of practice approved in advance by the department; or

(2) owners and operators shall use an equivalent test method, which complies with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department.

D. The following codes of practice shall be used to comply with Subsection C of this section:

(1) *Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks";*

(2) *Fiberglass Tank and Pipe Institute Publication RP 2007-2, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space";* or

(3) *Petroleum Equipment Institute Recommended Practice RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment of UST Facilities".*

E. Upon completion of a modification or repair of any cathodically protected storage tank system, owners and operators shall test the cathodic protection system in accordance with Subsections B and C of 20.5.107.705 NMAC to ensure that it is operating properly.

F. Owners and operators of a storage tank system shall maintain records of each repair, replacement and modification until the storage tank system is permanently closed pursuant to 20.5.115 NMAC.

G. Owners and operators shall meet all applicable installation requirements of 20.5.106 NMAC, including testing requirements, when repairing,

replacing or modifying a storage tank system involves installing new components. If any tank or piping of a storage tank system is replaced, owners and operators shall follow all requirements for properly assessing the site for contamination in compliance with 20.5.115 NMAC prior to installing the new components.

H. Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness according to the manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or according to requirements established by the implementing agency within 30 days following the date of completion of the repair.

I. Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with 20.5.107.704 NMAC to ensure it is operating properly. [20.5.107.709 NMAC - N, 07/24/2018]

20.5.107.710 INSPECTIONS, MONITORING AND TESTING:

A. For the purpose of enforcing the provisions of these regulations, all owners and operators of storage tanks shall, upon the request of the secretary or authorized department representatives, furnish information relating to such tanks, including tank equipment and contents, conduct monitoring or testing, and permit any department representative at all reasonable times to have access to, and to copy all records relating to such tanks. Owners and operators shall comply with all applicable and appropriate Occupational Health and Safety Act requirements, Sections 50-9-1 through 50-9-25 NMSA 1978, so that

storage tanks may be safely inspected. For the purpose of enforcing these regulations, department officers, employees, or representatives are authorized to:

(1) enter at reasonable times any establishment or place where a storage tank is located;

(2) inspect the storage tank system and obtain samples of its contents;

(3) conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater; and

(4) retrieve all data from any electronic release detection equipment or device.

B. The department shall commence and complete each inspection with reasonable promptness. If the secretary or department representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.

C. Owners and operators shall permit the department or authorized department representative to be present at and inspect all storage tank system installations, replacements, repairs, substantial modifications, installations of leak detection systems and storage tank system closures.

D. Owners and operators shall not intentionally delete any history from any electronic release detection equipment or device. [20.5.107.710 NMAC - N, 07/24/2018]

20.5.107.711 REQUIRED NOTIFICATION PRIOR TO REPLACEMENT, REPAIR AND MODIFICATION: To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention

of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the replacement, repair, and modification of the storage tank system are to take place. Notice need not be provided for normal maintenance. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

A. For replacements, modifications (including internal lining or changes to cathodic protection systems), and repairs, the term "critical junctures" means:

(1) completion of the excavation of existing tanks or piping;

(2) actual performance of the repair, lining or modification;

(3) any time during the project in which components of piping are connected;

(4) any time during the project in which a tank, its associated piping, spill prevention equipment, or secondary containment sumps are tested; and

(5) any time during the project when overfill prevention equipment is inspected to ensure it meets the requirements in 20.5.106.613 NMAC.

B. Owners, operators and certified tank installers shall give at least 30 days written notice before the replacement, modification or repair of a storage tank system. It may not be feasible for owners, operators, and certified tank installers to provide advance notice of emergency repairs; however, owners, operators, and certified tank installers shall provide notice of emergency repairs as soon as possible after completing emergency repairs. At a minimum, the notice for replacements, modifications, and repairs shall contain the following information:

(1) date the form is completed;

(2) facility name, facility ID number, address (with county), and telephone number;

(3) owner name, owner ID number, address, and telephone number;

(4) contractor name, address, and telephone number;

(5) description of type of replacement, modification or repair to be performed (such as spill containment, overspill prevention, release detection, piping or other);

(6) expected date on which replacement, modification or repair will be performed; and

(7) whether any part of the storage tank system is within 1,000 feet of a community water system or a potable drinking water well; and

(8) signature of owner, operator or an authorized representative.

C. In addition to the written notices described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

D. If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.107.711 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used for notification of replacement, repair and modification. The form is available on the petroleum storage tank bureau's pages on the department website, or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Santa Fe, NM 87505.]

20.5.107.712 DEPARTMENT REVIEW AND APPROVAL OF PLANS, INSTALLATION,

OPERATION, AND

MAINTENANCE: Owners and operators shall view any inspection, review or approval by the department as permission to proceed in accordance with all applicable rules, codes and standards. Review and approval by the department shall not relieve any owner, operator, or certified tank installer of his responsibility for compliance. If the department overlooks any deficiencies or violations in the course of plan review or inspection provided in 20.5 NMAC, the department may later require correction and compliance. [20.5.107.712 NMAC - N, 07/24/2018]

20.5.107.713 ALTERNATE METHODS:

A. If owners and operators want to operate, maintain, replace, repair or modify any part of a storage tank system with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin to operate, maintain, replace, repair or modify the storage tank system, unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation

to a standard or code supporting its use, if available; and

(7) demonstration of its equivalent protection of public health, safety and welfare and the environment.
B. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.107.713 NMAC - N, 07/24/2018]
 [The bureau provides an optional form that may be used to request approval of an alternate method. The form is available on the Petroleum Storage Tank Bureau's pages on the department website, or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, NM 87505.]

20.5.107.714 RECORD KEEPING:

A. Owners and operators shall maintain the following information for the life of the storage tank system:

- (1) a corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used, in accordance with 20.5.106.604 NMAC and 20.5.106.610 NMAC;
- (2) documentation of operation of corrosion protection equipment that demonstrates compliance with 20.5.107.705 NMAC;
- (3) documentation of storage tank system repairs, replacements and modifications that demonstrates compliance with 20.5 NMAC;
- (4) documentation of compliance with release detection requirements in accordance with 20.5.108 NMAC;
- (5) inspection logs required by 20.5.107 NMAC and 20.5.108 NMAC;
- (6) tank tightness, internal inspection and integrity test documents required by 20.5 NMAC;

- (7) any document approving any alternate method;
- (8) spill and overfill prevention equipment testing/inspection records;
- (9) containment sump testing records;
- (10) documentation of compatibility for UST systems;
- (11) documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping;
- (12) documentation of periodic walkthroughs;
- (13) documentation of operator training in accordance with 20.5.104 NMAC;
- (14) the operation and maintenance plan and related documentation as required by 20.5.107.701 NMAC; and
- (15) any other record or written approval required in 20.5 NMAC.

B. Availability and maintenance of records. Owners and operators shall keep the required records for the operational life of a tank, piping and storage tank system either:

- (1) at the storage tank site and immediately available for inspection by the department; or
- (2) at a readily available alternative site and the records shall be provided for inspection to the department upon request; if records are not available at a site during inspection, owners and operators shall send to the inspector within 10 working days all records requested by the inspector.

C. Owners and operators shall maintain permanent closure records required under 20.5.115 NMAC. Owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

D. If the owner and operator of a storage tank are separate

persons, only one person is required to comply with the requirements of this section; however, both parties are liable in the event of noncompliance. [20.5.107.714 NMAC - N, 07/24/2018]

20.5.107.715 REPORTING:

Owners and operators of a storage tank system shall cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the federal Solid Waste Disposal Act, as amended.

A. Owners and operators shall provide the following information to the department:

(1) registration for all storage tank systems in accordance with 20.5.102 NMAC, which includes certification of installation for new UST systems in accordance with Subsection C of 20.5.106.616 NMAC;

(2) reports of all releases in accordance with 20.5.102 NMAC and the requirements in 20.5.118 NMAC for reporting suspected releases, spills and overfills and confirmed releases;

(3) corrective actions planned or taken as required by 20.5.119 NMAC and 20.5.120 NMAC;

(4) notification before storage tank system installation, replacement, repair or modification in accordance with 20.5.106 NMAC and 20.5.107 NMAC; notification when any person assumes ownership of a storage tank system in accordance with 20.5.102 NMAC and notification before permanent closure or change in service in accordance with 20.5.115 NMAC; it may not be feasible for owners and operators to provide advance notice of emergency repairs; however, owners and operators shall provide notice of emergency repairs as soon as possible after completing emergency repairs;

(5) notification prior to storage tank systems changing to certain regulated substances in

accordance with Subsection A of 20.5.107.708 NMAC; and

(6) updated project drawings for any addition, replacement or modification of a storage tank system;

B. Owners and operators shall provide to the department all reports as required in 20.5.107 NMAC within 60 days of completion of the tests.

C. Owners and operators shall report any failed tests or inspections to the department within 24 hours of completion of the test or inspection in accordance with 20.5.118 NMAC.

D. Owners and operators shall ensure all reports required in 20.5.107 NMAC contain, at a minimum, the following:

(1) facility name and address;

(2) facility ID number;

(3) owner and operator name and address;

(4) owner ID number;

(5) date report was completed;

(6) date of the test;

(7) duration of the test;

(8) brand name and model number of equipment being tested or sufficient description to allow identification of the equipment;

(9) type of equipment being tested;

(10) type of test, including test procedures and methods;

(11) results of the test;

(12) name of the person who performed the inspection or test, and their qualifications as specified in 20.5.105 NMAC;

(13) name of the regulated substance stored in the tank associated with the equipment being tested; and

(14) for the inspections and testing

of spill prevention equipment, overfill prevention equipment, and containment sumps include the information from the following forms, as applicable, from *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*:

(a) spill bucket integrity testing, hydrostatic test method, single and double-walled vacuum method;

(b) containment sump integrity testing, hydrostatic testing method;

(c) UST overfill equipment inspection, automatic shutoff device and ball float valve; or

(d) automatic tank gauge operation inspection.

[20.5.107.715 NMAC - N, 07/24/2018]

HISTORY OF 20.5.107 NMAC:

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

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 9/12/88.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 2/14/89.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 8/4/89.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 6/12/90.

History of Repealed Material:

20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements (filed 2/27/97), repealed 8/15/03. 20.5.5 NMAC, Petroleum Storage Tanks, General Operating

Requirements (filed 7/16/03) repealed 4/4/08.

20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 4/4/08) repealed 07/24/2018.

Other History:

EIB/USTR-5, Underground Storage Tank Regulations - Part V - General Operating Requirements, filed 6/12/90,

renumbered, reformatted and replaced by 20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements, effective 11/5/95;

20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements filed 10/6/95 replaced by 20 NMAC

5.5, Underground Storage Tanks - General Operating Requirements, effective 4/1/97;

20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements, filed 2/27/97 was renumbered,

reformatted and replaced by 20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements, effective 8/15/03.

20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 7/16/03) replaced by 20.5.5

NMAC, Petroleum Storage Tanks, General Operating Requirements, effective 4/4/08.

20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 4/4/08) was renumbered, reformatted, and replaced by 20.5.107 NMAC, Petroleum Storage Tanks, General Operating Requirements for Underground Storage Tanks, effective 7/24/2018.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

TITLE 20

**ENVIRONMENTAL
PROTECTION**

**CHAPTER 5 PETROLEUM
STORAGE TANKS**

**PART 108 RELEASE
DETECTION FOR**

**UNDERGROUND STORAGE
TANK SYSTEMS**

20.5.108.1 ISSUING

AGENCY: New Mexico Environmental Improvement Board.
[20.5.108.1 NMAC - N, 07/24/2018]

20.5.108.2 SCOPE: This part applies to owners and operators of underground storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.
[20.5.108.2 NMAC - N, 07/24/2018]

20.5.108.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.
[20.5.108.3 NMAC - N, 07/24/2018]

20.5.108.4 DURATION:

Permanent.
[20.5.108.4 NMAC - N, 07/24/2018]

20.5.108.5 EFFECTIVE

DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.108.5 NMAC - N, 07/24/2018]

20.5.108.6 OBJECTIVE:

The purpose of 20.5.108 NMAC is to

ensure that releases from underground storage tanks are detected early to minimize potential harmful resulting effects, and to regulate underground storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.108.6 NMAC - N, 07/24/2018]

20.5.108.7 DEFINITIONS:

The definitions in 20.5.101 NMAC apply to this part.
[20.5.108.7 NMAC - N, 07/24/2018]

**20.5.108.8 to 20.5.108.799
[RESERVED]**

**20.5.108.800 GENERAL
RELEASE DETECTION
REQUIREMENTS FOR UST**

SYSTEMS: Owners and operators of all UST systems shall comply with the following:

A. Owners and operators of UST systems shall provide a method or combination of methods of release detection that:

(1) can detect a release from any portion of the tank, connected piping and ancillary equipment that routinely contains a regulated substance;

(2) is installed and calibrated in accordance with the manufacturer's instructions;

(3) is operated and maintained in accordance with one of the following, beginning on the effective date of these regulations:

(a) manufacturer's instructions;

(b) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; or

(c) requirements determined by the implementing agency to be no less protective of human health and the environment than Paragraph (1) and (2) of this subsection.

(4) has electronic and mechanical components that are tested to ensure

proper operation;

(5) with the exceptions of inventory control in 20.5.108.802 NMAC and manual tank gauging in 20.5.108.803 NMAC, meets the performance requirements in 20.5.108 NMAC in accordance with a third party certified method as listed by the national work group on leak detection evaluations; and

(6) is capable of detecting the leak rate or quantity specified for that method in 20.5.108 NMAC with a probability of detection of 0.95 and a probability of false alarm of 0.05.

B. Owners and operators shall maintain written confirmations of performance claims and their method of determination. These statements shall be written by the equipment manufacturer or installer and shall confirm that the equipment meets the applicable requirements of 20.5.108 NMAC.

C. Prior to implementing a new method or combination of methods of release detection, owners and operators shall have the UST system components tested to ensure the new method is capable of detecting a release.

D. When a release detection method indicates a release may have occurred, owners and operators shall notify the department in accordance with 20.5.102.204 and 20.5.118 NMAC.

E. Owners and operators of underground storage tank systems installed prior to April 4, 2008 that meet the performance standards in 20.5.106 NMAC shall provide release detection for storage tank systems by monitoring monthly for releases using one of the methods listed in Sections 20.5.108.805 NMAC through 20.5.108.809 NMAC with the following exceptions:

(1) Monthly inventory control may be used in accordance with the requirements in 20.5.108 NMAC, in conjunction with tank tightness testing conducted in accordance with this part at least every five years until 10 years after the tank was installed.

(2) UST

systems that do not meet the performance standards in 20.5.106 NMAC shall upgrade under 20.5.106 NMAC or permanently close under 20.5.115 NMAC.

(3) Manual tank gauging may be used if conducted in accordance with 20.5.108.803 NMAC.

(4) Underground pressurized piping that was installed prior to April 4, 2008 may use annual line tightness testing in conjunction with automatic line leak detectors in accordance with 20.5.108.810 NMAC, and

(5) Underground suction piping that was installed prior to April 4, 2008 may use line tightness testing every three years in accordance with 20.5.108.812 NMAC.

F. Owners and operators of UST systems installed or replaced after April 4, 2008 shall monitor the UST system monthly for releases using interstitial monitoring in accordance with 20.5.108.808 NMAC and either 20.5.108.811 or 20.5.108.813 NMAC.

G. Owners and operators shall ensure that any person who performs a test on their UST system in order to meet the requirements of 20.5.108 NMAC shall comply with the requirements in 20.5.105 NMAC.

H. Owners and operators shall ensure that equipment used to perform a test on their storage tank system is calibrated and maintained according to the manufacturer's requirements.

I. Owners and operators of UST systems shall maintain and provide to the department all reports required in 20.5.108 NMAC in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC. [20.5.108.800 NMAC - N, 07/24/2018]

20.5.108.801 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS:

A. Owners and operators of hazardous substance UST

systems installed before April 4, 2008 shall provide containment that meets the requirements in Subsection C of 20.5.108.801 NMAC, and these UST systems shall be monitored every 30 days using one or more of the UST methods allowed in 20.5.108 NMAC. Owners and operators may request to use an alternate method in accordance with the requirements of 20.5.108.814 NMAC and shall provide the department with information in writing on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance along with the characteristics of the UST site.

B. Owners and operators of hazardous substance UST systems installed on or after April 4, 2008 shall provide containment that meets the requirements in Subsection C of 20.5.108.801 NMAC, and shall monitor these UST systems at least every 30 days using interstitial monitoring in accordance with 20.5.108.808 NMAC and either 20.5.108.811 NMAC or 20.5.108.813 NMAC.

C. Release detection of hazardous substance UST systems shall meet the following requirements.

(1) Owners and operators shall design, construct and install secondary containment systems to:

(a) contain regulated substances that escape the primary containment until they are detected and removed;

(b) prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(c) be checked for evidence of a release monthly; the provisions of 40 CFR 265.193, containment and detection of releases, may be used to comply with these requirements for storage tank systems installed on or before the effective date of these regulations.

(2) Double-walled tanks shall be designed, constructed, and installed to:

(a) contain a release from any portion of

the inner tank within the outer wall; and

(b)

detect the failure of the inner wall.

(3) External liners (including vaults) shall be designed, constructed and installed to:

(a)

contain one hundred percent of the capacity of the largest tank within its boundary;

(b)

prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

(c)

surround the tank completely, thereby preventing lateral as well as vertical migration of regulated substances.

(4)

Underground piping shall be equipped with secondary containment that satisfies the requirements of this section (for example: trench liners or double-walled pipe). In addition, underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector in accordance with Subsection A of 20.5.108.810 NMAC. [20.5.108.801 NMAC - N, 07/24/2018]

20.5.108.802 INVENTORY CONTROL WITH TANK TIGHTNESS TESTING REQUIREMENTS FOR USTS:

Owners and operators of underground storage tanks installed on or before April 4, 2008 may use inventory control in conjunction with tank tightness testing every five years as release detection for 10 years after the storage tank system is installed. After the 10-year anniversary of the storage tank system installation, owners and operators shall use one of the methods in 20.5.108.805 NMAC through 20.5.108.809 NMAC. Inventory control with tank tightness testing shall meet the following requirements:

A. Inventory control or another test of equivalent performance shall be conducted monthly to detect a release of at least one percent of flow-through plus 130 gallons on a

monthly basis.

B. Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the UST are recorded each operating day.

C. The equipment used is capable of measuring the level of regulated substance over the full range of the UST’s height to the nearest one-eighth of an inch.

D. The regulated substance inputs are reconciled with delivery receipts by measurement of the UST inventory volume before and after delivery.

E. Deliveries are made through a drop tube that extends to within one foot of the UST bottom.

F. Regulated substance dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six cubic inches for every five gallons of regulated substance withdrawn.

G. The measurement of any water level in the bottom of the UST is made to the nearest one-eighth of an inch at least once a month.

H. Practices described in the *American Petroleum Institute Publication RP 1621, “Bulk Liquid Stock Control at Retail Outlets”* may be used, where applicable, as guidance in meeting the requirements of 20.5.108.802 NMAC.

I. Owners and operators shall meet all the requirements for tank tightness testing in 20.5.108.804 NMAC.

J. At least annually, owners and operators shall check the operability and serviceability of any measuring device or equipment used for inventory control in accordance with Subsection A of 20.5.108.800 NMAC.

K. Measurements and results of each monthly monitoring period shall be maintained in accordance with the recordkeeping requirements in 20.5.108.815 NMAC and shall be provided to the department upon request. [20.5.108.802 NMAC - N, 07/24/2018]

20.5.108.803 MANUAL TANK GAUGING REQUIREMENTS FOR USTS:

A. Manual tank gauging:

(1) may be used as the sole method of release detection for regulated underground tanks of 550 gallons or less nominal capacity and tanks with a nominal capacity of 551 to 1,000 gallons that meet the tank diameter of 48 inches or 64 inches for the life of these tanks;

(2) may be used as a method of release detection for regulated underground tanks with a nominal capacity of 551 to 1,000 gallons, with a diameter other than either 48 inches or 64 inches, for 10 years after installation in conjunction with periodic tank tightness testing in accordance with 20.5.108.802 NMAC and 20.5.108.804 NMAC;

(3) may be used as a method of release detection for regulated underground tanks with a nominal capacity of 1,001 to 2,000 gallons with any diameter for 10 years after installation in conjunction with periodic tank tightness testing in accordance with 20.5.108.802 NMAC and 20.5.108.804 NMAC;

(4) shall not be used after the 10th year of the installation for tanks described in Paragraphs (2) and (3) of this subsection; after the 10th year, owners and operators shall change to a method described in 20.5.108.805 NMAC through 20.5.108.809 NMAC; and

(5) shall not be used to meet the requirements of this part for tanks of greater than 2,000 gallons nominal capacity.

B. Owners and operators of underground storage tanks who use manual tank gauging as release detection shall ensure the following:

(1) tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(2) level measurements are based on an average of two consecutive stick

readings at both the beginning and ending of the period;

(3) the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(4) a suspected release is reported in accordance with the requirements of 20.5.118 NMAC if the variation between beginning and ending measurements exceeds any of the weekly or monthly standards as follows:

(a) underground storage tank with a nominal capacity of 550 gallons or less, with a minimum test duration of 36 hours, where the weekly standard for one test exceeds 10 gallons, or the monthly standard for a four-test average exceeds five gallons;

(b) underground storage tank with a nominal capacity of 551 gallons through 1,000 gallons with a tank diameter of 64 inches and a minimum test duration of 44 hours, where the weekly standard for one test exceeds nine gallons or the monthly standard for a four-test average exceeds four gallons;

(c) underground storage tank with a nominal capacity of 551 gallons through 1,000 gallons with a tank diameter of 48 inches and a minimum test duration of 58 hours, where the weekly standard for one test exceeds 12 gallons or the monthly standard for a four-test average exceeds six gallons;

(d) underground storage tank with a nominal capacity of 551 gallons through 1,000 gallons, with a minimum test duration of 36 hours, where the weekly standard for one test exceeds 13 gallons or the monthly standard for a four-test average exceeds seven gallons;

(e) underground storage tank with a nominal capacity of 1,001 gallons through 2,000 gallons, with a minimum test duration of 36 hours, where the weekly standard for one test exceeds 26 gallons or the monthly

standard for a four-test average exceeds 13 gallons.

C. At least annually, owners and operators shall check the operability and serviceability of any measuring device or equipment used for manual tank gauging in accordance with Subsection A of 20.5.108.800 NMAC.

D. Measurements and results of each monthly monitoring period shall be maintained in accordance with the recordkeeping requirements in 20.5.108.815 NMAC and shall be provided to the department upon request. [20.5.108.803 NMAC - N, 07/24/2018]

20.5.108.804 TANK TIGHTNESS TESTING FOR USTS:

A. Tank tightness testing (or another test of equivalent performance) shall be capable of detecting a one-tenth gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. Owners and operators may not use tank tightness testing alone as a method of release detection.

B. Owners and operators shall ensure any person conducting this testing shall meet the tester requirements in 20.5.105 NMAC.

C. Owners and operators of UST systems shall maintain and provide the department with reports for all tank tightness testing conducted on their storage tank systems in accordance with 20.5.108.815 NMAC and 20.5.8.816 NMAC.

D. An automatic tank gauge system conducting a one-tenth gallon per hour leak test does not meet the requirements for tank tightness testing in this section. [20.5.108.804 NMAC - N, 07/24/2018]

20.5.108.805 AUTOMATIC TANK GAUGING REQUIREMENTS FOR USTS:

A. Owners and operators of underground storage tanks may use automatic tank gauging as a method of release detection if the automatic tank gauging system:

(1) tests for the loss of product and can detect a two-tenths gallon per hour leak rate from any portion of the storage tank system that routinely contains regulated substances;

(2) meets inventory control or another test of equivalent performance requirements in accordance with 20.5.108.802 NMAC; and

(3) tests the storage tank system using one of the following modes:

(a) in-tank static testing conducted at least once every 30 days;

(b) continuous in-tank leak detection operating on an uninterrupted basis to determine the leak status of the tank at least once every 30 days; or

(c) continuous in-tank leak detection operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.

B. Owners and operators shall at least annually test the automatic tank gauging system for proper operation beginning three years after the effective date of these regulations. Inspections and testing shall be conducted by a person who is certified as a technician by the manufacturer of the automatic tank gauging system and meets the tester requirements in 20.5.105 NMAC. The annual tests shall, at a minimum and as applicable, include the following:

(1) automatic tank gauge and other controllers: test alarm; verify system programming and configuration; test battery backup;

(2) probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft

is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller; and

(3) vacuum pumps and pressure gauges: ensure proper communication with sensors and controller.

C. Owners and operators shall use one of the following to comply with Paragraph B of this section:

(1) *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(2) The manufacturer's testing or inspection instructions.

D. Owners and operators shall review the monitoring reports on a monthly basis and notify the department in accordance with 20.105.18 NMAC if there is a failed or inconclusive result.

E. Owners and operators shall maintain records for all inspections and testing required in this section in accordance with 20.5.108.815 NMAC. Owners and operators shall provide the department with a report of each annual test of the automatic tank gauge system in accordance with 20.5.108.816 NMAC.

F. A one tenth gallon per hour leak test conducted by an automatic tank gauge system does not meet the requirements for tank tightness testing in 20.5.108.804 NMAC. [20.5.108.805 NMAC - N, 07/24/2018]

20.5.108.806 VAPOR MONITORING REQUIREMENTS FOR USTS: Owners and operators of underground storage tanks may use vapor monitoring or testing as a method of release detection as long as the testing or monitoring for vapors within the soil gas of the excavation zone meets all of the following requirements:

A. The materials used

as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area.

B. The stored regulated substance, or a tracer compound placed in the UST system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the UST.

C. The measurement of vapors by the monitoring device is not rendered inoperative by groundwater, rainfall, soil moisture or other known interferences so that a release could go undetected for more than 30 days.

D. The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the UST, and

E. The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the UST system, a component or components of that substance, or a tracer compound placed in the UST system.

F. In the UST excavation zone, the site is assessed:

(1) to ensure compliance with the requirements in Subsections A through D of this section; and

(2) to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains a regulated substance.

G. Site assessments conducted after the effective date of these regulations are signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department and approved in advance by the department.

H. Monitoring wells are clearly marked and secured

to avoid unauthorized access and tampering.

I. Hand-held electronic sampling equipment that is used for vapor monitoring is:

(1) annually checked to ensure that the equipment is functioning properly; and

(2) calibrated prior to each sampling event in accordance with the manufacturer's instructions.

J. All records of the site assessment and vapor monitoring system are maintained in accordance with 20.5.108.815 NMAC, and

K. Monthly reports of vapor monitoring and annual reports of functionality checks of electronic sampling equipment are maintained and provided to the department in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC. [20.5.108.806 NMAC - N, 07/24/2018]

20.5.108.807 GROUNDWATER MONITORING REQUIREMENTS FOR USTS: Owners and operators of underground storage tanks may use groundwater monitoring as a method of release detection as long as the testing or monitoring for liquids on the groundwater meets all of the following requirements:

A. The regulated substance stored is immiscible in water and has a specific gravity of less than one.

B. Groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil between the UST system and the monitoring wells or devices is not less than one one-hundredth centimeters per second (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials).

C. The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions.

D. Monitoring wells shall be sealed from the ground surface to the top of the filter pack.

E. Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible.

F. The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of non-aqueous phase liquid on top of the groundwater in the monitoring wells.

G. Within and immediately below the UST system excavation zone, the site is assessed to:

- (1) ensure compliance with the requirements in Subsections A through E of this section; and
- (2) establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product.

H. Site assessments conducted after the effective date of these regulations are signed by a qualified professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department and approved in advance by the department.

I. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

J. Owners and operators shall ensure that hand-held electronic and field equipment that is used for groundwater monitoring is:

- (1) annually checked to ensure that the equipment is functioning properly; and
- (2) calibrated prior to each sampling event in accordance with the manufacturer's instructions.

K. All records of the site assessment and groundwater monitoring system are maintained in accordance with 20.5.108.815 NMAC.

L. Monthly reports of groundwater monitoring and annual reports of functionality checks of electronic sampling equipment are maintained and provided to the department in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC.

[20.5.108.807 NMAC - N, 07/24/2018]

20.5.108.808 INTERSTITIAL MONITORING REQUIREMENTS FOR USTs:

A. Owners and operators of underground storage tanks may use interstitial monitoring between the UST and a secondary barrier immediately around and underneath the tank, but only if the system is designed, constructed and installed to detect a leak from any portion of the storage tank system that routinely contains any regulated substance and also meets one of the following requirements:

(1) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains a regulated substance, and the sampling or testing method complies with the requirements of the current edition of an industry code or standard approved in advance by the department; *Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Storage Tanks"* may be used to meet this requirement.

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier; the monitoring system shall meet all of the following requirements:

(a) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least one X 10(-6)) centimeters per second for the regulated substance stored) to direct a release to the monitoring point and permit its detection.

(b) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected.

(c) For cathodically protected USTs, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system.

(d) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty days.

(e) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions.

(f) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering, or

(3) For USTs with an internally fitted liner, an automated device can detect a release between the inner wall of the UST and the liner, and the liner is compatible with the regulated substance stored.

B. For all interstitially monitored USTs, owners and operators shall have all sensors tested by a qualified tester at least annually to ensure proper operation and functionality, including for alarm operability and communication with controller or monitoring equipment, and sensors shall be verified as set to the proper height, placement, and location in accordance with Subsection A of 20.5.108.800 NMAC and 20.5.107 NMAC. At a minimum, these tests shall follow either:

(1) liquid sensor functionality testing procedures described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and*

Secondary Containment Equipment at UST Facilities"; or

(2) the equipment manufacturer's published testing procedures.

C. Owners and operators shall ensure the requirements in 20.5.108.800 NMAC are met prior to implementing interstitial monitoring.

D. Owners and operators shall maintain and provide the department reports relating to the requirements of this section in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC. [20.5.108.808 NMAC - N, 07/24/2018]

20.5.108.809 STATISTICAL INVENTORY RECONCILIATION (SIR) FOR UST SYSTEMS:

A. Owners and operators of underground storage tanks may use release detection methods based on the application of statistical principles to inventory data similar to those described in 20.5.108.802 NMAC. Owners and operators who use SIR shall:

(1) comply with the requirements in Subsections B through G of 20.5.108.802 NMAC;

(2) use a third-party certified quantitative method;

(3) use a third-party vendor to analyze the data and include the name of the SIR provider and the name and version of the SIR method used for analysis;

(4) use a method that is capable of detecting a leak rate of two-tenths gallon per hour or a release of 150 gallons within 30 days;

(5) use a method with a threshold that does not exceed one-half the minimum detectible leak rate; and

(6) use a method that reports a quantitative result with a calculated leak rate.

B. Owners and operators shall ensure that the data is collected, analyzed, and reported within the same 30-day period in order to check for releases at least monthly.

C. Owners and operators shall:

(1) notify the department within 24 hours of discovery of an inconclusive or fail result;

(2) provide the department all data collected for the statistical analysis where the results are either inconclusive or fail and identify any further investigation necessary to determine whether there is a suspected release as part of the seven-day report required in 20.5.118 NMAC;

(3) perform an investigation within 14 days of receiving an inconclusive result, or another time frame approved in advance by the department to determine whether a suspected release should be investigated under 20.5.118 NMAC; and

(4) report a suspected release to the department within 24 hours in accordance with 20.5.118 NMAC if the investigation indicates a fail result.

D. Owners and operators shall inspect all mechanical equipment and test all electronic equipment annually to ensure proper operation and calibration.

E. Qualitative SIR methods are no longer accepted as meeting the requirements for monthly monitoring.

F. Owners and operators shall maintain results and records of monthly monitoring in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC, and shall provide them to the department upon request.

[20.5.108.809 NMAC - N, 07/24/2018]

20.5.108.810 REQUIREMENTS FOR UST UNDERGROUND PRESSURIZED PIPING INSTALLED PRIOR TO APRIL 4, 2008:

Owners and operators of underground storage tank systems with piping installed prior to April 4, 2008, except those used for emergency power generation, shall provide release detection for underground pressurized piping

that routinely contains regulated substances by following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

A. Owners and operators of UST systems shall:

(1) use automatic line leak detectors (including mechanical or electronic detectors) that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping when a leak is detected at three gallons per hour at 10 pounds per square inch line pressure within one hour;

(2) perform an annual test of the operation of the leak detector which includes a simulated leak, is conducted in accordance with the manufacturer's testing protocol, and confirms the automatic line leak detector detects a leak at three gallons per hour at 10 pounds per square inch line pressure within one hour; and

(3) use a method, or combination of methods, for monitoring the piping for releases that complies with one of the following:

(a) A precision line tightness test is conducted every 12 months that is capable of detecting a leak of 0.1 gallons per hour at one and one-half times the operating pressure.

(b) The method is capable of detecting a two-tenths gallon per hour leak and is used every 30 days.

(c) One of the methods in 20.5.108.805 NMAC through 20.5.108.809 NMAC is used, if it is capable of detecting a release from any portion of the underground piping that routinely contains a regulated substance.

(d) Interstitial monitoring is used in accordance with all of the requirements in 20.5.108.808 NMAC and 20.5.108.811 NMAC.

B. Owners and operators who use statistical inventory reconciliation for monthly monitoring

of underground pressurized piping shall conduct annual line tightness testing in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC.

C. Automatic line leak detectors and sensors required in this section that either fail a test or are found to be damaged shall be repaired or replaced and tested in accordance with 20.5.108.800 NMAC and Paragraph (1) of Subsection A of 20.5.108.810 NMAC. A line tightness test shall be conducted in accordance with Subsection A of this section after an automatic line leak detector has been replaced.

D. Equipment and methods used to monitor the piping shall be appropriate for the type and length of piping.

E. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";* or

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems".*

F. Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.108.815 NMAC and provide to the department reports for all leak detector testing, line tightness testing, and sensor testing in accordance with 20.5.108.816 NMAC.

[20.5.108.810 NMAC - N, 07/24/2018]

20.5.108.811 REQUIREMENTS FOR UST UNDERGROUND PRESSURIZED PIPING INSTALLED ON OR AFTER APRIL 4, 2008: Owners and operators of underground storage tank systems with piping installed on or after April 4, 2008 shall use interstitial monitoring as release detection for underground pressurized piping that routinely contains regulated substances by following the current

edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

A. Owners and operators of UST systems shall:

(1) use automatic line leak detectors (including mechanical or electronic detectors) that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping when a leak is detected at three gallons per hour at 10 pounds per square inch line pressure within one hour; and

(2) perform an annual test of the operation of the leak detector which includes a simulated leak, is conducted in accordance with the manufacturer's testing protocol, and confirms the automatic line leak detector detects a leak at three gallons per hour at 10 pounds per square inch line pressure within one hour.

B. Owners and operators shall use interstitial monitoring that complies with all of the requirements in 20.5.108.808 NMAC and the following:

(1) Sensors shall be installed in all containment sumps associated with the piping, including under-dispenser containment, transition sumps, and submersible turbine pump containment sumps used to monitor the interstice.

(2) Sensors shall:

(a) monitor the interstice;

(b) monitor all containment sumps associated with the piping;

(c) sound an alarm and automatically shut off the submersible turbine pump when a regulated substance or water is detected;

(d) be positioned in the lowest point of the containment sump; and

(e) be tested annually in accordance with Subsection B of 20.5.108.805 NMAC.

(3)

Containment sumps used for interstitial monitoring shall be tested every three years starting three years after the effective date of the regulations. The testing of the containment sumps shall comply with one of the following:

(a) the testing procedures as described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities";* or

(b) the equipment manufacturer's published testing procedures.

C. Automatic line leak detectors and sensors required in this section that either fail a test or are found to be damaged shall be repaired or replaced and tested in accordance with 20.5.108.800 NMAC and Paragraph (1) of Subsection A of 20.5.108.811 NMAC. A line tightness test shall be conducted in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC after an automatic line leak detector has been repaired or replaced.

D. Equipment and methods used to monitor the piping shall be appropriate for the type and length of piping.

E. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems";* or

(3) *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".*

F. Owners and

operators shall maintain all records of release detection and testing in accordance with 20.5.108.815 NMAC and provide to the department reports for all release detector testing, line tightness testing, containment sump testing, and sensor testing in accordance with 20.5.108.816 NMAC.
[20.5.108.811 NMAC - N, 07/24/2018]

20.5.108.812 REQUIREMENTS FOR UST UNDERGROUND SUCTION PIPING INSTALLED PRIOR TO APRIL 4, 2008:

A. Owners and operators of underground storage tank systems with piping installed prior to April 4, 2008 that conveys regulated substances under suction where the piping system does not meet the requirements in Subsection B of 20.5.108.812 NMAC shall use one of the following methods. These methods shall be designed to detect a release from any portion of underground piping.

(1) A line tightness test shall be conducted every three years and the tightness test shall be capable of detecting a one-tenth gallon per hour leak rate.

(2) Interstitial monitoring shall be used in accordance with all of the requirements in 20.5.108.808 NMAC and 20.5.108.813 NMAC.

(3) Statistical inventory reconciliation shall be used in accordance with 20.5.108.809 NMAC for monthly monitoring of underground suction piping in conjunction with line tightness testing in accordance with Paragraph (1) of Subsection A of this section.

(4) Vapor monitoring shall be used in accordance with 20.5.108.806 NMAC.

(5) Groundwater monitoring shall be used in accordance with 20.5.108.807 NMAC.

B. Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

(1) The below-grade piping operates at less than atmospheric pressure.

(2) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(3) Only one check valve is included in each suction line.

(4) The check valve is located directly below and as close as practical to the suction pump.

(5) Compliance with Paragraphs (2) through (4) of Subsection B of this section is demonstrated.

C. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";* or

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems".*

D. Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.108.15 NMAC and provide to the department reports for all release detector testing, line tightness testing, and sensor testing in accordance with 20.5.108.816 NMAC.
[20.5.108.812 NMAC - N, 07/24/2018]

20.5.108.813 REQUIREMENTS FOR UST UNDERGROUND SUCTION PIPING INSTALLED ON OR AFTER APRIL 4, 2008:

A. Owners and operators of underground storage tank systems with piping installed on or after April 4, 2008 where the piping conveys regulated substances under suction shall meet the requirements for interstitial monitoring in 20.5.108.808 NMAC and the following:

(1) Sensors shall be installed in all containment sumps associated with

the piping, including under-dispenser containment, transition sumps, and secondary containment sumps used to monitor the interstice.

(2) Sensors shall:

(a) monitor the interstice;

(b) monitor all containment sumps associated with the piping;

(c) sound an alarm and automatically shut off the pump when a regulated substance or water is detected;

(d) be positioned in the lowest point of the containment sump; and

(e) be tested annually in accordance with Subsection B of 20.5.108.805 NMAC.

(3) Containment sumps used for interstitial monitoring shall be tested every three years beginning three years after the effective date of the regulations. The testing of the containment sumps shall comply with one of the following:

(a) the testing procedures as described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities";* or

(b) the equipment manufacturer's published testing procedures.

B. Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

(1) The below-grade piping operates at less than atmospheric pressure.

(2) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(3) Only one check valve is included in each suction line.

(4) The check valve is located directly below and as

close as practical to the suction pump.

(5)

Compliance with Paragraphs (2) through (4) of Subsection B of this section is demonstrated.

C. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum*

Equipment Institute Publication RP 100, "Recommended Practices for Installation of Underground Liquid Storage Systems";

(2) *American*

Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems"; or

(3) *Petroleum*

Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

D. Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.108.815 NMAC and provide to the department reports for all containment sump testing, line tightness testing, and sensor testing in accordance with 20.5.108.816 NMAC.

[20.5.108.813 NMAC - N, 07/24/2018]

20.5.108.814 ALTERNATE METHODS:

A. If owners and operators want to install materials or methods of release detection equipment for tanks or piping required in 20.5.108 NMAC that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

(1) date the

form is completed;

(2) facility

name, facility ID number, address (with county) and telephone number;

(3) owner

name, owner ID number, address and telephone number;

(4) citation to

regulation for which alternate method or material (such as type of piping) is requested;

(5) brief

description of the proposed alternate method or material;

(6)

justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and

(7)

demonstration of its equivalent protection of public health, safety and welfare and the environment.

B. Another type of release detection method, or combination of methods, may be used if approved pursuant to this section, and if it can detect a two-tenths gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

C. The department may approve another method if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.108 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide protection of public health, safety and welfare and the environment equivalent to the protection provided by the methods in this part.

D. In addition to

the requirements in Subsections B and C of this section, any request for an alternate method of release detection for hazardous substance UST systems shall also include information on effective corrective action technologies, health risks and chemical and physical properties of the stored substance, and the characteristics of the UST site. [20.5.108.814 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to request approval of an alternate method. The form is available on the Petroleum Storage Tank Bureau's pages on the department's website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.108.815

RELEASE DETECTION RECORDKEEPING:

A. All storage tank system owners and operators shall maintain records in accordance with 20.5.107 NMAC demonstrating compliance with all applicable requirements of 20.5.108 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to maintain the records required by this section; however, both parties are liable in the event of noncompliance.

B. Records to be maintained shall include, but not be limited to:

(1) all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer;

(2) the results of any sampling, testing, or monitoring;

(3) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site and any schedules of calibration and maintenance required by the release detection equipment manufacturer;

(4) no later than three years after the effective date of these rule, records of site assessments required under 20.5.108.806 NMAC and 20.5.108.807 NMAC. Records of site assessments developed after the effective date of these rules must be signed by a professional engineer, professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department; and

(5) the results of annual operational tests of release detection equipment. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria for the specified equipment or needs to have action taken, and describe any action taken to correct an issue. [20.5.108.815 NMAC - N, 07/24/2018]

20.5.108.816 REPORTING:

A. Owners and operators shall provide to the department all reports as required in 20.5.108 NMAC within 60 days of completion of the tests.

B. Owners and operators shall report any test or inspection results that are anything other than a “pass” or “normal” result to the department within 24 hours of completion of the test or inspection in accordance with 20.5.118 NMAC.

C. Owners and operators shall ensure all reports required in 20.5.108 NMAC contain, at a minimum, the following:

- (1) facility name and address;
- (2) facility ID number;
- (3) owner and operator name and address;
- (4) owner ID number;
- (5) date report was completed;
- (6) date of the test;
- (7) duration of the test;

(8) brand name and model number of equipment being tested or sufficient description to allow identification of the equipment;

(9) type of equipment being tested;

(10) type of test, including test procedures and methods;

(11) results of the test;

(12) name of the person who performed the inspection or test, and their qualifications as specified in 20.5.105 NMAC;

(13) brand name and model number of the testing equipment used during the test and the date the testing equipment was last calibrated (only applies to tests performed in accordance with 20.5.108.800 NMAC, 20.5.108.804 NMAC, 20.5.108.806 NMAC, 20.5.108.807 NMAC, 20.5.108.808 NMAC, 20.5.108.810 NMAC through 20.5.108.813 NMAC);

(14) monitoring well number and instrument reading in parts per million (only applies to tests performed in accordance with 20.5.108.807 NMAC);

(15) monitoring well number, depth to groundwater and confirmation that free product was observed or not (only applies to tests performed in accordance with 20.5.108.807 NMAC);

(16) a completed copy of the automatic tank gauge operation inspection form in *Petroleum Equipment Institute Publication RP 1200, “Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities”* (only applies to tests performed in accordance with 20.5.108.805 NMAC);

(17) for testing of automatic line leak detectors:

- (a) serial number of the leak detector;
- (b) description of storage tank system;
- (c)

detected leak rate in gallons per hour; (d) line pressure and functional element holding pressure in pounds per square inch;

(e) type, diameter and length of piping;

(f) test results, including the following: (i)

whether flow is restricted by a mechanical line leak detector when a leak is detected;

(ii) whether the turbine shuts down when a leak is detected by an electronic line leak detector;

(18) for testing of sensors used for monitoring secondary containment and interstitial spaces:

(a) the information in the liquid sensor functionality testing form in the *Petroleum Equipment Institute Publication RP 1200, “Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities”*; and

(b) information on whether each individual sensor meets automatic shutdown requirements in 20.5.108.811 NMAC and 20.5.108.813 NMAC; and

(19) for line tightness testing:

- (a) leak rate;
- (b) testing pressure;
- (c) bleed back;
- (d) piping type;
- (e) piping diameter; and
- (f) length of piping.

D. Owners and operators may use forms and checklist developed by the department, when available, to meet the reporting requirements in 20.5.108 NMAC. [20.5.108.816 NMAC - N, 07/24/2018]

[Provide reports as required in Subsection A of this section as directed at the department's website. The forms or checklists referred to in Subsection D of this section are available on the Petroleum Storage Tank Bureau's pages on the department's website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

HISTORY OF 20.5.108 NMAC:

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

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 9/12/88.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 2/14/89.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 8/4/89.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 6/12/90.

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 6/26/90.

History of Repealed Material:

20 NMAC 5.6, Underground Storage Tanks - Release Detection (filed 2/27/97) repealed 8/15/03.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 7/16/03) repealed 4/4/08.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 4/4/08) repealed 07/24/2018.

Other History:

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection (filed 6/26/90) renumbered, reformatted and replaced by 20 NMAC 5.6, Underground Storage Tanks - Release Detection, effective 11/5/95;

20 NMAC 5.6, Underground Storage Tanks - Release Detection (filed 10/6/95) replaced by 20 NMAC 5.6, Underground Storage Tanks - Release

Detection, effective 4/1/97; 20 NMAC 5.6, Underground Storage Tanks - Release Detection (filed 2/27/97) was renumbered, reformatted and replaced by 20.5.6 NMAC, Petroleum Storage Tanks - Release Detection, effective 8/15/03.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 7/16/03) replaced by 20.5.6 NMAC, Petroleum Storage Tanks - Release Detection, effective 4/4/08.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 4/4/08) replaced by 20.5.108 NMAC, Petroleum Storage Tanks - Release Detection for Underground Storage Tank Systems, effective 7/24/2018.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

TITLE 20

**ENVIRONMENTAL
PROTECTION**

**CHAPTER 5 PETROLEUM
STORAGE TANKS**

**PART 109 NEW AND
UPGRADED ABOVE GROUND**

**STORAGE TANK SYSTEMS:
DESIGN, CONSTRUCTION, AND
INSTALLATION**

20.5.109.1 ISSUING

AGENCY: New Mexico Environmental Improvement Board. [20.5.109.1 NMAC - N, 07/24/2018]

20.5.109.2 SCOPE: This part applies to owners and operators of above ground storage tanks as provided in 20.5.101 NMAC. If the owner and operator of an above ground storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance. [20.5.109.2 NMAC - N, 07/24/2018]

20.5.109.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the

provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978. [20.5.109.3 NMAC - N, 07/24/2018]

20.5.109.4 DURATION:

Permanent. [20.5.109.4 NMAC - N, 07/24/2018]

20.5.109.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section. [20.5.109.5 NMAC - N, 07/24/2018]

20.5.109.6 OBJECTIVE:

The purpose of 20.5.109 NMAC is to set forth the requirements for the design, construction, installation and upgrading of above ground storage tank systems in a manner that will prevent releases and to protect the public health, safety and welfare and the environment of the state. [20.5.109.6 NMAC - N, 07/24/2018]

20.5.109.7 DEFINITIONS:

The definitions in 20.5.101 NMAC apply to this part. [20.5.109.7 NMAC - N, 07/24/2018]

**20.5.109.8 to 20.5.109.899
[RESERVED]**

**20.5.109.900 INSTALLATION
OF AST SYSTEMS:**

A. Owners and operators shall properly install all ASTs and piping in accordance with the manufacturer's instructions and in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, or in accordance with 20.5.109.920 NMAC. Installations shall address the following:

- (1) support, if required in the sole discretion of the department, by the use of saddles or longitudinal supports;
- (2) a foundation that is of sufficient

thickness and reinforcement to support the tank when the tank is filled to maximum capacity with a regulated substance and that is constructed of concrete with a minimum compression strength of 3,000 pounds per square inch at 28 days (or other comparable material approved by the department), and shall be used for:

- (a) double-walled or double-bottomed above ground storage tanks;
- (b) horizontal tanks with saddles, which shall be placed at a minimum on footings constructed of concrete or other comparable material approved in advance by the department;
- (c) horizontal tanks with longitudinal supports, which shall be placed on a concrete slab that extends at least 12 inches beyond the perimeter of the tank and is constructed of concrete or other comparable material approved in advance by the department;
- (d) vertical tanks, which shall be placed on a concrete slab that extends at least 12 inches beyond the perimeter of the tank and is constructed of concrete or other comparable material approved in advance by the department; and
- (e) single-walled above ground storage tanks, which shall be installed inside secondary containment that meets the requirements of 20.5.109.904 NMAC;
- (3) anchorage;
- (4) fills, gauges and vents;
- (5) environmental protection; and
- (6) testing and inspection.

B. Tanks and underground piping installed or replaced after July 1, 2013 must be secondarily contained in accordance with 20.5.109.903 NMAC or 20.5.109.904 NMAC, except for any piping that meets the requirements for safe suction in 20.5.111.1108 NMAC.

C. Secondary containment must be able to contain regulated substances leaked from the primary containment until they are

detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the AST.

D. Owners and operators shall provide an approval from the New Mexico state fire marshal's office to the department for any exceptions to the requirements of the international fire code, including any AST at a retail fueling facility that exceeds the size limit on ASTs;

E. In addition to other requirements of this section, if owners or operators want to place into service any shop-fabricated AST that has been permanently closed at any location, owners and operators shall:

- (1) not use the AST until they have provided to the department:
 - (a) the age and type of tank;
 - (b) the tank manufacturer;
 - (c) a list of regulated and non-regulated substances previously stored in the tank and for what duration;
 - (d) a description of any unusual circumstances involving the AST; and
 - (e) any other information requested by the bureau based on the circumstances; and
- (2) install the system in compliance with all requirements for new AST systems in this part.

F. Based on the information received in Subsection D of this section, the department may require owners and operators who want to relocate an AST that has been temporarily or permanently closed to have the tank recertified by a certified tank inspector, the tank manufacturer, or a professional engineer prior to use.

G. Owners and operators shall use the applicable national code or standard listed below to comply with the requirements for the installation of above ground storage tank systems in this part:

- (1) *American Petroleum Institute Standard 650, "Welded Tanks for Oil Storage";*

- (2) *American Petroleum Institute Standard 2610, "Design, Construction, Operation, Maintenance, and Inspection of Terminal & Tank Facilities";*

- (3) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

- (4) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";*

- (5) *Petroleum Equipment Institute Publication RP200, "Recommended Practices for Installation of Above Ground Storage Tank Systems for Motor Vehicle Fueling";*

- (6) *Petroleum Equipment Institute Publication RP700, "Recommended Practices for the Design and Maintenance of Fluid Distribution Systems at Vehicle Maintenance Facilities";*

- (7) *Petroleum Equipment Institute Publication RP800, "Recommended Practices for the Design and Installation of Bulk Storage Plants";*

- (8) *Petroleum Equipment Institute Publication RP1000, "Recommended Practices for the Installation of Marina Fueling Systems";*

- (9) *Petroleum Equipment Institute Publication RP1300, "Recommended Practices for the Design, Installation, Service, Repair, and Maintenance of Aviation Fueling Systems";*

- (10) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems";*

- (11) *Steel Tank Institute RP R912, "Installation Instructions for Shop Fabricated Aboveground Storage Tanks for Flammable, Combustible Liquids";* or

- (12) *International Code Council, "International Fire Code".* [20.5.109.900 NMAC - N,

07/24/2018]

20.5.109.901 REQUIRED NOTIFICATION PRIOR TO

INSTALLATION: To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the installation of a storage tank system are to take place. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

A. For installations, the term "critical junctures" means:

- (1) installation of any tank pad, vault, or secondary containment for a storage tank system;
- (2) setting of a storage tank and piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;
- (3) placing a regulated substance in the tank;
- (4) any time during the installation in which components of piping are connected;
- (5) preparation of any excavation immediately prior to receiving backfill for piping or containment sumps;
- (6) all pressure testing or integrity testing of a storage tank system, including associated piping, spill prevention equipment, and containment sumps performed during the installation;
- (7) completion of backfill and filling of any excavation;
- (8) installation and testing of overflow prevention equipment and release detection equipment.

B. Owners, operators and certified tank installers shall give at least 30 days written notice before the installation of a storage tank system. At a minimum, the installation notice shall contain the following information:

- (1) date the

form is completed;

(2) facility name, facility ID number, address (with county), and telephone number;

(3) owner name, owner ID number, address, and telephone number;

(4) contractor name, address, and telephone number;

(5) tank details (number and size, type and materials, products to be stored);

(6) piping material and type of leak detection;

(7) type of spill and overflow prevention;

(8) type of corrosion protection (sacrificial, impressed current, or none with explanation why corrosion protection not required);

(9) method of leak detection (automatic tank gauges, visual, interstitial monitoring);

(10) approximate date installation will take place; and

(11) the signature of the owner or owner's representative filling out the form.

C. Owners, operators and certified tank installers shall provide required project drawings with the 30-day written notice.

D. In addition to the written notice described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure.

In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

E. If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.109.901 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for notification of installation. The form is available

on the Petroleum Storage Tank Bureau's pages on the department's website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.109.902 PERFORMANCE STANDARDS FOR AST SYSTEMS:

A. In order to prevent releases due to structural failure, corrosion or spills and overfills for as long as an AST system is used to store regulated substances, owners and operators of new AST systems shall properly design, construct and initially test each new AST system, provide project drawings in accordance with 20.5.109.901 NMAC, and ensure that any portion of an AST system that routinely contains regulated substances and is in contact with an electrolyte, such as soil, concrete or water shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall ensure that the entire AST system is compatible with any regulated substance conveyed. Owners and operators shall use the applicable national code or standard listed below to meet the requirements of this section:

(1) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(2) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";*

(3) *National Fire Protection Association Standard 407, "Standard for Aircraft Fuel Servicing";* or

(4) *International Code Council, "International Fire Code".*

B. Owners and operators shall install and operate

only ASTs made of steel that are constructed in accordance with one or more of the following, as applicable:

(1)

Underwriters Laboratories 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids";

(2)

Underwriters Laboratories 2085, "Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids";

(3)

Underwriters Laboratories 2245, "Standard for Below-Grade Vaults for Flammable Liquid Storage Tanks";

(4) *American*

Petroleum Institute Standard 650, "Welded Tanks for Oil Storage"; or

(5)

International Code Council, "International Fire Code".

C. Owners and

operators shall protect newly installed ASTs from corrosion in accordance with one or more of the following:

(1) *American*

Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";

(2) *National*

Association of Corrosion Engineers International Standard RP0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";

(3) *Steel*

Tank Institute R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems";

(4) *Steel*

Tank Institute R893, "Recommended Practice for External Corrosion Protection of Shop Fabricated Aboveground Storage Tank Floors";

(5) *American*

Petroleum Institute Publication RP651, "Cathodic Protection of Aboveground Petroleum Storage Tanks".

D. Above ground tanks located at an elevation so as to produce a gravity head on the dispenser system or piping shall

be equipped with an anti-siphon or solenoid valve which meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall install and adjust the anti-siphon or solenoid valve so that fuel cannot flow by gravity or siphon from the tank to the dispenser system, loading rack, or other equipment, if the piping fails when the dispensing or transferring equipment is not in use. One of the following shall be used to meet the requirements of this Subsection:

(1) *National*

Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages"; or

(2)

International Code Council, "International Fire Code".

[20.5.109.902 NMAC - N, 07/24/2018]

20.5.109.903 AST SECONDARY CONTAINMENT: DOUBLE WALLED AST

SYSTEMS: Owners and operators shall design, provide project drawings for, and install double walled above ground storage tank systems in accordance with the following:

A. Double-walled

above ground storage tanks shall be installed in accordance with the applicable installation requirements in this part and shall use one or more of the following, as applicable, to comply with the requirements of this section:

(1)

Underwriters Laboratories 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids";

(2)

Underwriters Laboratories 2085, "Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids"; or

(3)

Underwriters Laboratories 2245, "Standard for Below-Grade Vaults for

Flammable Liquid Storage Tanks".

B. Above ground

piping shall meet the requirements in 20.5.109.913 NMAC and 20.5.109.915 NMAC;

C. Underground piping

shall be double-walled and meet the requirements for underground piping in this part. Owners and operators shall use one or more of the following, as applicable, to meet these requirements:

(1)

Underwriters Laboratories Standard 971, "Standard for Nonmetallic Underground Piping for Flammable Liquids";

(2)

Underwriters Laboratories Standard 567, "Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-gas";

(3)

Underwriters' Laboratories of Canada Guide ULC-107.7, "Glass-fibre Reinforced Plastic Pipe and Fittings for Flammable Liquids";

(4) *ULC*

Standards CAN/ULC-S633:2017, "Standard for Flexible Connector Piping for Fuels".

D. Containment sumps

shall be installed in accordance with the requirements in this part.

E. Owners and

operators shall base all secondary containment systems on the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. One or more of the following shall be used, as applicable, to comply with these requirements:

(1) *Petroleum*

Equipment Institute Publication RP 200, "Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling";

(2) *Society*

of Protective Coatings SSPC-TU2/NACE6G197, "Design, Installation and Maintenance of Coating Systems for Concrete used in Secondary Containment";

(3) *American Concrete Institute Publication ACI 350-06, "Code Requirements for Environmental Engineering Concrete Structures";*

(4) *American Petroleum Institute Standard 650, "Welded Tanks for Oil Storage";* or

(5) *Steel Tank Institute RP R912, "Installation Instructions for Shop Fabricated Aboveground Storage Tanks for Flammable, Combustible Liquids".* [20.5.109.903 NMAC - N, 07/24/2018]

20.5.109.904 AST SECONDARY CONTAINMENT: SINGLE-WALLED TANKS AND PIPING: Owners and operators shall construct a containment area under and around single-walled ASTs and piping, except for piping that meets the requirements of Paragraph (1) of Subsection A of 20.5.109.915 NMAC. Internal lining of ASTs shall not be used as a method of secondary containment.

A. General requirements:

(1) Owners and operators shall design and construct secondary containment to minimize damage to the surfaces of the tanks due to corrosion, accumulation of water, and stray electrical current.

(2) Owners and operators shall ensure that any regulated substance stored in an AST system is chemically compatible with the secondary containment material. If owners and operators store more than one type of regulated substance within a single containment area, owners and operators shall ensure that the substances are chemically compatible with each other and with the containment material.

(3) Owners and operators shall construct a containment area which has a capacity of at least one hundred ten percent of the size of the largest AST in the containment area plus the volume displaced by the other AST(s).

(4) Owners and operators shall not use clay

for the construction of secondary containment.

(5) Owners and operators may use a vault which complies with the requirements of this section as secondary containment.

B. Concrete secondary containment. Owners and operators may use concrete for construction of the containment area except for masonry or cinder block which shall not be used.

(1) If owners and operators use concrete for construction of secondary containment installed on or after July 1, 2011, the concrete containment shall be designed and constructed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, which shall be approved in advance of construction by the department. New concrete secondary containment shall comply with Subparagraph (a), (b) or (c) below:

(a) be coated or internally lined with a material which, in conjunction with the concrete, has a demonstrated permeability rate to the regulated substance stored of 1×10^{-7} centimeters per second or less;

(b) be installed in accordance with a set of plans that have been stamped by a professional engineer demonstrating that the secondary containment system is able to contain a release of regulated substances for seven days and properly support the above ground storage tank systems within the secondary containment; or

(c) be installed in accordance with an alternate method for concrete secondary containment design and construction that is approved in advance by the department pursuant to 20.5.109.920 NMAC.

(2) One of the following shall be used to comply with the concrete secondary containment requirements:

(a) *American Concrete Institute 350-06, "Code Review for Environmental*

Engineering Concrete Structures";

(b) *American Concrete Institute 350.2R-04, "Concrete Structures for Containment of Hazardous Materials";*

(c) *American Concrete Institute 224R-01, "Control of Cracking in Concrete Structures";*

(d) *National Association of Corrosion Engineers International RP0892-2007, "Coatings and Linings Over Concrete for Chemical Immersion and Containment Service";*

(e) *Society of Protective Coatings TU2/NACE6G197, "Design, Installation and Maintenance of Coating Systems for Concrete Used in Secondary Containment";*

(f) *National Association of Corrosion Engineers International Standard Number 6/SSPC-SP 13, "Surface Preparation of Concrete";*

(g) *National Association of Corrosion Engineers International RP0281, "Method for Conducting Coating (Paint) Panel Evaluation Testing in Atmospheric Exposures";* or

(h) *American Society for Testing and Materials D4258, "Standard Practice for Surface Cleaning Concrete for Coating".*

(3) Owners and operators of existing AST systems shall have the option of fulfilling the requirements of this subsection by submitting to the department a report stamped by a professional engineer demonstrating that the secondary containment system is able to contain a release of regulated substances for seven days and properly support the above ground storage tank systems within the secondary containment.

C. Liners as secondary containment.

(1) If owners and operators use geo-synthetic membrane for secondary containment, the geo-synthetic membranes or liners shall have a minimum thickness of 60 mils.

(2) Owners and operators shall install liners in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, or in accordance with the manufacturer’s specifications. Owners and operators shall submit to the department a report on the installation of the geo-synthetic membrane which shall certify that the geo-synthetic membrane has been installed in accordance with the manufacturer’s recommendations or an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. The report shall contain the date of the inspection and installation of the geo-synthetic membrane, the test methods used during the inspection, data collected during the inspection, and the standard or code of practice according to which the installation was conducted. An installer or inspector with appropriate certification or experience (which shall be documented in the report) shall prepare the report.

(3) Earthen dike fields shall be lined with a geo-synthetic membrane to qualify as secondary containment.

D. Steel as secondary containment. If owners and operators use steel for construction of the secondary containment area, and if the steel is routinely in contact with soil, water, concrete, or another electrolyte, owners and operators shall cathodically protect the containment area in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.
[20.5.109.904 NMAC - N, 07/24/2018]

20.5.109.905 USTS USED AS ASTS: Effective July 1, 2013, the use of USTs as ASTs is prohibited.
[20.5.109.905 NMAC - N, 07/24/2018]

20.5.109.906 [RESERVED]

20.5.109.907 ADDITIONAL PERFORMANCE STANDARDS FOR FIELD-ERECTED ASTS:

A. If owners and operators install a field-erected tank, owners and operators shall comply with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

B. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Petroleum Institute Standard 620, “Design and Construction of Large, Welded, Low Pressure Storage Tanks”;*

(2) *American Petroleum Institute Standard 650, “Welded Tanks for Oil Storage”;*

(3) *American Petroleum Institute Specification 12B, “Bolted Tanks for Storage of Production Liquids”;*

(4) *American Petroleum Institute Specification 12D, “Field Welded Tanks for Storage of Production Liquids”;* or

(5) *American Society of Mechanical Engineers B96.1, “Welded Aluminum-Alloy Storage Tanks”.*

[20.5.109.907 NMAC - N, 07/24/2018]

20.5.109.908 PERFORMANCE STANDARDS FOR EXISTING AST SYSTEMS:

A. Owners and operators of existing single walled AST systems (installed on or before July 1, 2001), must have complied with the following requirements:

(1) New AST performance standards in 20.5.109 NMAC by July 1, 2011;

(2) Upgrade requirements in Subsections C, D, and E of 20.5.109.908 NMAC by the deferred date of July 1, 2013; or

(3) Closure requirements in 20.5.115 NMAC by

July 1, 2011.

(4) Any good faith upgrades to an AST system secondary containment made in compliance with this part prior to December 3, 2010 shall be deemed in compliance with this section.

B. Owners and operators of existing AST systems that do not comply with the requirements of the International Fire Code shall provide approval from the state fire marshal’s office to the department no later than three years after the effective date of these regulations.

C. Tank Upgrade Requirements. Owners and operators must have upgraded existing single walled ASTs by installing secondary containment or replaced them with double walled ASTs by July 1, 2013 in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. ASTs that have not been upgraded by the effective date of these regulations shall be permanently closed in accordance with 20.5.115 NMAC.

(1) Owners and operators of ASTs must have met secondary containment requirements either by the installation new concrete secondary containment in accordance with 20.5.109.904 NMAC or upgraded the existing concrete secondary containment to meet the general requirements in Subsection A of 20.5.109.904 NMAC along with one of the following:

(a) submit to the department a report stamped by a professional engineer for the existing concrete secondary containment that demonstrates the secondary containment system is able to contain a release of regulated substance for seven days and properly supports the AST systems within the secondary containment; or

(b) coat the interior of, or install an internal lining in, the existing concrete secondary containment in accordance with the manufacturer’s

instructions or in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(2) Owners and operators of ASTs must have upgraded the secondary containment by the installation of liners that meet the following:

(a) requirements for liners as secondary containment in Subsection C of 20.5.109.904 NMAC; and

(b) requirements for installation of AST systems in 20.5.109.900 NMAC; or

(3) Owners and operators of ASTs must have met the secondary containment requirements by the installation of steel secondary containment in accordance with the requirements in Subsection D of 20.5.9.904 NMAC.

D. Piping upgrade requirements. Owner and operators of ASTs must have met the requirements of 20.5.109.916 NMAC for secondary containment of piping.

E. Owners and operators must have used one or more of the following to comply with the existing secondary containment requirements:

(1) *American Concrete Institute 350-06, "Code Review for Environmental Engineering Concrete Structures";*

(2) *American Concrete Institute 350.2R-04, "Concrete Structures for Containment of Hazardous Materials";*

(3) *American Concrete Institute 224R-01, "Control of Cracking in Concrete Structures";*

(4) *National Association of Corrosion Engineers International RP0892-2007, "Coatings and Linings Over Concrete for Chemical Immersion and Containment Service";*

(5) *Society of Protective Coatings TU2/NACE6G197, "Design, Installation and Maintenance of Coating Systems for Concrete Used in Secondary*

Containment";

(6) *National Association of Corrosion Engineers International Standard Number 6/SSPC-SP 13, "Surface Preparation of Concrete";*

(7) *National Association of Corrosion Engineers International RP0281, "Method for Conducting Coating (Paint) Panel Evaluation Testing in Atmospheric Exposures";* or

(8) *American Society for Testing and Materials D4258, "Standard Practice for Surface Cleaning Concrete for Coating";*

[20.5.109.908 NMAC - N, 07/24/2018]

20.5.109.909 ABOVE GROUND STORAGE TANKS AT MARINAS:

A. Owners and operators of AST systems at marinas shall install an automatic break-away device to shut off flow of fuel from on-shore piping, which shall be located at the connection of the on-shore piping and the piping leading to the dock. Owners and operators shall install another automatic break-away device to shut off flow of fuel located at any connection between flexible piping and hard piping on the dispenser system and dock. The automatic break-away devices shall be easily accessible, and their location shall be clearly marked.

B. Owners and operators of AST systems at marinas shall electrically isolate dock piping where excessive stray electrical currents are encountered.

C. Owners and operators of AST systems at marinas shall protect piping from stress due to tidal action.

D. Owners and operators of AST systems at marinas shall install spill catchment basins in addition to a system that will allow the level of regulated substance in the AST to be monitored during a delivery of fuel to the AST. Unless the AST system is equipped with an audible overfill alarm that will alert the transfer operator at ninety percent

of capacity, and overfill protection which will shut off flow of product during a fuel delivery to the tank at ninety-five percent, owners and operators shall visually monitor the delivery of fuel.

E. Owners and operators shall use one or more of the following to comply with the requirements in this section:

(1) *Petroleum Equipment Institute Publication RP 1000, "Recommended Practices for the Installation of Marina Fueling Systems";* or

(2) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";*

[20.5.109.909 NMAC - N, 07/24/2018]

20.5.109.910 SPILL AND OVERFILL PREVENTION:

A. Except as provided in Subsection B of this section, to prevent spilling and overfilling associated with transfers of regulated substances to above ground storage tank systems, owners and operators shall use the following spill and overfill prevention equipment:

(1) spill prevention equipment that will prevent release of regulated substances to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket); and

(2) overfill prevention equipment for ASTs that will:

(a) automatically shut off flow into the tank when the tank is no more than ninety-five percent full; or

(b) alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level audible and visual alarm.

B. Owners and operators are not required to use the spill and overfill prevention equipment specified in Subsections A and G of this section if approved in

writing in advance by the department where:

(1) alternative equipment is used that is determined by the department to be no less protective of public health, safety and welfare and the environment than the equipment specified in Paragraphs (1) or (2) of Subsection A of this section; or

(2) the above ground storage tank system is filled by transfers of no more than 25 gallons at one time;

C. Flow restrictors shall not be used in vent lines and shall not be used as overfill prevention equipment for ASTs.

D. Spill and overfill prevention equipment must be periodically tested or inspected in accordance with 20.5.110.1005 NMAC.

E. Owners and operators of AST systems that were previously exempt from spill and overfill requirements shall install no later than three years after the effective date of these regulations, spill and overfill prevention equipment required in Paragraphs (1) and (2) of Subsection A of this section for any AST system at retail and fleet refueling facilities where the fill port is located within a secondary containment system.

F. Overfill prevention and spill prevention equipment shall be either listed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory for use with flammable and combustible liquids or approved prior to installation in accordance with Paragraph (1) of Subsection B of this section.

[20.5.109.910 NMAC - N, 07/24/2018]

20.5.109.911 VENTING FOR ABOVE GROUND STORAGE TANK SYSTEMS:

A. Owners and operators shall design and construct venting for all above ground storage tank systems, following the current edition of an industry standard or code

of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

B. Normal atmospheric tank vents shall be located so that the discharge point is outside of buildings and higher than the fill pipe opening. Vent pipes shall be installed not less than 15 feet from power ventilation air intake devices and not less than five feet from a building opening. Vent outlets and devices shall be designed and installed to minimize blockage. Normal vent piping on AST systems installed after the effective date of these regulations shall not be used for any purpose other than venting the tank.

C. Types of vent pipes.
(1) Vent pipes that are provided for normal tank venting shall extend at least 12 feet above ground level.

(2) If attached to a structure, vent pipes shall extend at least five feet above the highest projection of the canopy or roof.

(3) Vent pipes for normal tank venting shall be of appropriate size for the capacity and operating conditions of the tank.

(4) Emergency vents shall be of appropriate size for the capacity of the AST and shall be installed on the primary tank and on the interstice of all double-walled tanks.

D. One of the following shall be used to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP200 "Recommended Practices for Installation of Above Ground Storage Tank Systems for Motor Vehicle Fueling";*

(2) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(3) *Underwriters Laboratories 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids";* or

(4) *International Code Council,*

"International Fire Code".
[20.5.109.911 NMAC - N, 07/24/2018]

20.5.109.912 VAULTS:

A. Owners and operators shall provide project drawings for and install new AST systems which include vaults in accordance with the following requirements:

(1) A vault must completely enclose each tank, with no openings in the vault enclosure except those necessary for access to, inspection of, and filling, emptying, and venting of the tank. Each tank shall be enclosed in its own vault, although adjacent vaults may share a common wall. However, for good cause shown, the department, in its sole discretion, may grant a variance from the one-tank-one-vault requirement, for existing tanks only, if owners and operators demonstrate that the variance will provide equivalent protection of health, safety and welfare and the environment.

(2) Every vault shall be liquid tight or sealed with no backfill around the tank. If a vault is constructed of concrete, owners and operators shall ensure it meets the requirements of Subsection B of 20.5.109.904 NMAC.

(3) There shall be adequate space between the tank and the vault for inspection of the tanks and its appurtenances.

(4) Above-grade vaults shall be resistant to damage from the impact of a motor vehicle, or suitable collision barriers shall be installed.

(5) A vault shall include connections to permit venting of each vault to dilute, disperse, and remove any vapors prior to personnel entering the vault.

(6) A vault shall be equipped with a detection system capable of detecting liquids, including water, and capable of activating an audible alarm.

(7) A vault shall include a means for recovering liquid from the vault.

(a)

If a pump is used to meet this requirement, it shall not be permanently installed in the vault.

(b)

Electric-powered portable pumps shall meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

(c)

National Fire Protection Association Standard 70, "National Electrical Code" shall be used to comply with the requirements of this paragraph.

B. Vault construction.

Owners and operators shall design and construct:

(1) the walls and floor of a vault of reinforced concrete at least six inches thick;

(2) the top of an above-grade vault of noncombustible material, and shall design and construct the top:

(a)

to be weaker than the walls of the vault, to ensure that the thrust of any explosion occurring inside the vault is directed upward before significantly high pressure can develop within the vault; and

(b)

to safely relieve or contain the force of any explosion occurring inside the vault.

(3) the

top and floor of the vault and the tank foundation to withstand the anticipated loading, including loading from vehicular traffic, where applicable; and

(4) the walls and floor of any vault installed below grade in compliance with good engineering practice to withstand anticipated soil and hydrostatic loading.

C. All tanks, piping and other associated equipment in the interior of a vault shall meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in

advance by the department. One of the following shall be used to comply with this requirement:

(1) *National Fire Protection Association Standard 70, "National Electrical Code";* or

(2)

Underwriters Laboratories 2245, "Standard for Below-Grade Vaults for Flammable Liquid Storage Tanks".

D. Venting of vaults.

(1) Vent pipes that are provided for normal tank venting shall extend at least 12 feet above ground level.

(2) Emergency

vents shall be vapor tight and may be permitted to discharge inside the vault.

(3) Owners

and operators shall not use long-bolt manhole covers for this purpose.

(4) Owners

and operators shall ensure that all vault vents meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *National Fire Protection Association Standard 91, "Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids".*

E. Vault entry.

(1) A vault shall include a method of personnel entry.

(2) Owners

and operators shall post a warning sign indicating procedures for safe entry at each entry point.

(3) Owners

and operators shall secure each entry point against unauthorized entry and vandalism.

(4) Owners

and operators shall provide each vault with a suitable means for admission of a fire suppression agent.

[20.5.109.912 NMAC - N, 07/24/2018]

20.5.109.913 GENERAL PERFORMANCE STANDARDS

FOR PIPING:

A. Owners and operators shall properly design and construct new piping, provide project drawings, initially test piping, and ensure that any steel portion of piping that routinely contains regulated substances and is in contact with an electrolyte, such as soil or water, shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) third party certification from a nationally recognized laboratory;

(2) *American Society of Mechanical Engineering Standard B31.3, "Process Piping";*

(3) *American Society of Testing and Materials A53, "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless";*

(4) *American Society of Testing and Materials A106, "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service";* or

(5) *American Society of Testing and Materials A135, "Standard Specification for Electric-Resistance-Welded Steel Pipe".*

B. Owners and operators shall ensure that piping is compatible with any regulated substance conveyed in accordance with 20.5.110.1009 NMAC.

C. Owners and operators shall protect all piping from impact, settlement, vibration, expansion, corrosion, and damage by fire.

D. Owners and operators shall install a containment sump at any point where piping transitions from above the surface of the ground to below the ground surface. Containment sumps shall be either listed in accordance with an industry standard or code of practice

developed by a nationally recognized association or independent testing laboratory for use with flammable and combustible liquids or approved prior to installation by the Department in accordance with the alternate methods requirements in 20.5.109.920 NMAC.

E. If owners and operators install more than one type of piping at a storage tank system, then owners and operators shall comply with the requirements applicable to each type of piping for that run of piping.

[20.5.109.913 NMAC - N, 07/24/2018]

20.5.109.914 PERFORMANCE STANDARDS FOR PIPING CONSTRUCTED OF NON-CORRODIBLE MATERIAL:

A. If owners and operators construct or operate piping of fiberglass-reinforced plastic or flexible piping, the piping shall:

- (1) be completely underground;
- (2) be within secondary containment that includes a release detection system that meets the requirements of 20.5.111 NMAC;
- (3) have a suitable cover approved by the piping manufacturer; or
- (4) have equivalent protection approved by the piping manufacturer and approved by the department prior to installation.

B. If owners and operators install non-corrodible piping in an AST system, the piping shall be double-walled.

C. Owners and operators shall ensure that the piping meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and that the piping is approved by the manufacturer for the application for which it is to be used. Owners and operators shall use one or more of the following to comply with this requirement:

- (1) *Underwriters Laboratories Standard*

971, “*Standard for Nonmetallic Underground Piping for Flammable Liquids*”; or

(2) *Underwriters Laboratories of Canada Standard S660, “Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids”.*

[20.5.109.914 NMAC - N, 07/24/2018]

20.5.109.915 PERFORMANCE STANDARDS FOR STEEL PIPING FOR AST SYSTEMS:

If owners and operators construct or operate piping of steel for an AST system, owners and operators shall properly design and construct and provide project drawings for piping that routinely contains regulated substances in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall install all piping in accordance with the piping manufacturer’s recommendations.

A. Steel piping for ASTs shall be coated with a suitable material approved by the piping manufacturer and shall be either:

- (1) totally above the ground with all surfaces visible; or
- (2) entirely contained in secondary containment that complies with the requirements of 20.5.109.916 NMAC.

B. Steel piping with an internal diameter greater than two inches shall be welded or flanged together.

C. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Society of Mechanical Engineering Standard B31.3, “Process Piping”;*

(2) *American Society of Testing and Materials A53, “Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless”;* or

(3) *American Society of Testing and Materials A 135, “Standard Specification for Electric-Resistance-Welded Steel Pipe”.*

[20.5.109.915 NMAC - N, 07/24/2018]

20.5.109.916 SECONDARY CONTAINMENT FOR AST PIPING:

To install new piping or replace existing piping in an AST system, owners and operators shall only use piping that is:

- A.** double-walled in compliance with 20.5.109.903 NMAC;
 - B.** designed and constructed with secondary containment that meets the requirements of 20.5.109.904 NMAC; or
 - C.** steel piping that meets the requirements of 20.5.109.915 NMAC.
- [20.5.109.916 NMAC - N, 07/24/2018]

20.5.109.917 SECONDARY CONTAINMENT FOR AST DISPENSERS:

Owners and operators shall install a containment sump underneath each dispenser system associated with an AST, unless the dispenser is located within secondary containment.

A. Owners and operators shall hydrostatically test the sump upon installation, in accordance with manufacturer’s recommendations.

B. The following may be used to comply with this containment sump requirement: dispenser liners, under-dispenser containment, dispenser pans, and dispenser sump liners.

C. Under-dispenser containment sumps shall be either listed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory for use with flammable and combustible liquids or approved prior to installation by the department in accordance with the alternate methods requirements in 20.5.109.920 NMAC. [20.5.109.917 NMAC - N,

07/24/2018]

20.5.109.918 LOADING**RACKS:**

A. Owners and operators shall design, construct and install loading racks following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Petroleum Institute Standard 2610, "Design, Construction, Operation, Maintenance & Inspection of Terminal and Tank Facilities";*

(2) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(3) *International Code Council, "International Fire Code";* or

(4) *Petroleum Equipment Institute RP 800, "Recommended Practices for Installation of Bulk Storage Plants".*

B. Owners and operators of aviation fuel storage tank systems who install loading racks shall comply with *National Fire Protection Association Standard 407, "Standard for Aircraft Fuel Servicing".*

C. Owners and operators shall install a containment system that is designed to contain all releases of regulated substances that occur during loading and unloading operations at the loading rack. For all loading racks, owners and operators shall install either:

(1) a drainage system, or secondary containment system meeting the requirements of 20.5.109 NMAC, with a catchment basin capable of containing the largest compartment of a tank car or tanker truck that is loaded or unloaded at the facility; or

(2) a drainage system that is connected to a treatment facility designed to receive

releases of regulated substances that occur during loading and unloading operations.

D. Owners and operators shall ensure that loading racks are at least 25 feet from ASTs containing class I liquids (such as gasoline), buildings, and property lines. Owners and operators shall ensure that loading racks are at least 15 feet from tanks containing class II or class III liquids.

[20.5.109.918 NMAC - N, 07/24/2018]

20.5.109.919 REQUIRED CERTIFICATIONS:

A. Certification of compliance. All owners and operators of new above ground storage tank systems shall certify in the registration form required by 20.5.102 NMAC compliance with the following requirements:

(1) installation of tanks and piping in 20.5.109 NMAC;

(2) installation of cathodic protection of steel tanks and piping in 20.5.109.902 NMAC and Subsection D of 20.5.109.904 NMAC;

(3) financial responsibility under 20.5.117 NMAC; and

(4) release detection in 20.5.111 NMAC.

B. Installer certification. All owners and operators of new above ground storage tank systems shall ensure that the installer certifies in the registration form required by 20.5.102 NMAC that the methods used to install the tanks and piping comply with the requirements in 20.5.109 NMAC.

C. Certification of installation. For installations after August 15, 2003, owners and operators shall demonstrate compliance with the installation standards in 20.5.109.900 NMAC.

Owners and operators shall provide a certification of installation on the AST registration form required by 20.5.102 NMAC, which asserts that all of the following methods of certification, testing, and inspection were used

to demonstrate compliance with installation requirements of the AST system:

(1) the installer has been certified by the tank and piping manufacturers;

(2) the installer has been certified or licensed as required in 20.5.105 NMAC;

(3) the installer has notified, submitted required documentation to, and the installation has been inspected by the department; and

(4) all work listed in the manufacturer's installation checklists has been completed.

[20.5.109.919 NMAC - N, 07/24/2018]

20.5.109.920 ALTERNATE METHODS:

A. If owners and operators want to install tanks, piping, storage tank systems, spill and overflow equipment, secondary containment, or any other requirement of this part with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

(1) date the form is completed;

(2) facility name, facility ID number, address (with county) and telephone number;

(3) owner name, owner ID number, address and telephone number;

(4) citation to regulation for which alternate method or material (such as type of piping) is requested;

(5) brief description of the proposed alternate method or material;

(6)

justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and

(7)

demonstration of its equivalent protection of public health, safety and welfare and the environment.

B. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.109.920 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to request approval of an alternate method. The form is available on the Petroleum Storage Tank Bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

HISTORY OF 20.5.109 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of

public records - state records center and archives.

EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design, Construction, and Installation, filed 9/12/88

EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design, Construction, and Installation, filed 8/4/89

EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design, Construction, and Installation, filed 6/12/90

History of Repealed Material:

20 NMAC 5.4, Underground Storage Tanks, New and Upgraded UST Systems:

Design, Construction, and Installation (filed 2/27/97), repealed 8/15/03.

20.5.4 NMAC, Petroleum Storage

Tanks, New and Upgraded Tank Systems: Design, Construction and Installation

(filed 7/16/03) repealed 4/4/08.

20.5.4 NMAC, Petroleum Storage

Tanks, New and Upgraded Tank Systems: Design, Construction and Installation

(filed 4/4/08) repealed 07/24/2018.

Other History:

EIB/USTR-4, Underground Storage Tank Regulations - Part IV - New and Upgraded UST Systems: Design, Construction, and Installation (filed 6/12/90), renumbered, reformatted and replaced by 20 NMAC 5.4, New and

Upgraded UST Systems: Design, Construction, and Installation, effective 11/5/95.

20 NMAC 5.4, Underground Storage Tanks, New and Upgraded UST Systems: Design, Construction, and Installation (filed 10/6/95) replaced by 20 NMAC 5.4, New and Upgraded UST Systems: Design, Construction, and

Installation, effective 4/1/97.

20 NMAC 5.4, Underground Storage Tanks, New and Upgraded UST Systems: Design, Construction, and Installation (filed 2/27/97) was renumbered, reformatted and replaced by 20.5.4 NMAC, New and Upgraded Tank

Systems: Design, Construction and Installation, effective 8/15/03.

20.5.4 NMAC, Petroleum Storage Tanks, New and Upgraded Tank Systems: Design, Construction and Installation

(filed 8/15/03) was replaced by 20.5.109 NMAC, Petroleum Storage Tanks, New and Upgraded Above Ground Storage Tank Systems: Design, Construction and Installation, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

TITLE 20

**ENVIRONMENTAL
PROTECTION**

**CHAPTER 5 PETROLEUM
STORAGE TANKS**

**PART 110 GENERAL
OPERATING REQUIREMENTS
FOR ABOVE GROUND
STORAGE TANK SYSTEMS**

20.5.110.1 ISSUING

AGENCY: New Mexico Environmental Improvement Board. [20.5.110.1 NMAC - N, 07/24/2018]

20.5.110.2 SCOPE: This part applies to owners and operators of above ground storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.110.2 NMAC - N, 07/24/2018]

20.5.110.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.110.3 NMAC - N, 07/24/2018]

20.5.110.4 DURATION:

Permanent. [20.5.110.4 NMAC - N, 07/24/2018]

20.5.110.5 EFFECTIVE

DATE: July 24, 2018 unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.110.5 NMAC - N, 07/24/2018]

20.5.110.6 OBJECTIVE:

The purpose of 20.5.110 NMAC is to ensure that the operation and

maintenance of above ground storage tanks will prevent releases and to protect the public health, safety and welfare and the environment of the state.

[20.5.110.6 NMAC - N, 07/24/2018]

20.5.110.7 DEFINITIONS:

The definitions in 20.5.101 NMAC apply to this part.

[20.5.110.7 NMAC - N, 07/24/2018]

20.5.110.8 to 20.5.110.999

[RESERVED]

20.5.110.1000 OPERATION AND MAINTENANCE OF ABOVE GROUND STORAGE TANK SYSTEMS:

Owners and operators shall properly maintain all tanks, piping, secondary containment and other associated equipment required in 20.5.109 NMAC, and shall ensure that all tanks, piping, secondary containment and other associated equipment for all storage tank systems are fully operational at all times. Owners and operators shall notify the department in accordance with 20.5.118 NMAC if a visual inspection, other inspection or testing conducted in accordance with 20.5.110 NMAC or 20.5.111 NMAC indicates that a release may have occurred.

A. Owners and operators shall visually inspect monthly an AST and all its components that are readily accessible to visual inspection.

B. Owners and operators shall maintain the exterior coating of an AST and ancillary equipment not in contact with soil in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

(1) *Society of Protective Coatings SSPC-PA 1, "Shop, Field, and Maintenance Painting of Steel";*

(2) *Society of Protective Coatings, "The Inspection*

of Coatings and Linings: A Handbook of Basic Practice for Inspectors, Owners and Specifiers";

(3) *Society of Protective Coatings SSPC-PA Guide 4, "Guide to Maintenance Repainting with Oil Base or Alkyd Painting Systems";* or

(4) *Society of Protective Coatings SSPC-PA Guide 5, "Guide to Maintenance Coating of Steel Structures in Atmospheric Service".*

C. Owners and operators shall mark fill port lids and label the tanks of ASTs as to the regulated substance stored in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *American Petroleum Institute RP 1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals".*

D. If any steel piping installed in a trench is used in an AST system, owners and operators shall visually inspect the trench monthly. Owners and operators shall draw off any liquid that has accumulated in the trench within one week of the accumulation, and shall remove any other debris that has accumulated inside the trench. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. If a basin sump is located in the trench, owners and operators shall keep the basin sump free of accumulated liquid and debris. Owners and operators shall not install any valves in any basin sump in a piping trench.

E. Owners and operators shall check ASTs monthly for the presence of any accumulated liquids, other than the intended regulated substance. ASTs shall be

checked at the lowest possible point inside the tank. Any accumulated liquid other than the intended regulated substance shall be removed to the extent technically possible. Owners and operators shall properly dispose of any liquid removed from an AST.

[20.5.110.1000 NMAC - N, 07/24/2018]

20.5.110.1001 OPERATIONS AND MAINTENANCE PLAN:

Owners and operators of all storage tank systems shall adopt and implement a written operations and maintenance plan, which they shall keep at the facility for the life of the storage tank system. Owners and operators of unmanned storage tank systems may keep the operations and maintenance plan at an alternate location as long as it is made readily available to the department upon request. The operations and maintenance plan shall be as specific as possible for each facility and shall include the piping and ancillary equipment that routinely contains regulated substances, or controls the flow of regulated substances. Owners and operators shall use, by reference, operational and maintenance guidance from the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. Owners and operators who reference a current edition of an industry standard or code of practice shall maintain a copy of the code or standard they reference. Owners and operators shall not implement the plan until it has been approved by the department.

A. At a minimum, the operations and maintenance plan shall include the following:

(1) a detailed plan showing inspections, operations, testing and maintenance to be done on a daily, monthly, quarterly and annual basis; the plan shall include a description of how owners and operators properly dispose of regulated substances spilled at the facility, and any water or soil removed from any part of the storage tank

system where there is any indication it might be or have been contaminated with a regulated substance;

(2) a description of periodic operation and maintenance walk-through inspections in accordance with 20.5.110.1008 NMAC; and

(3) responses to emergency situations; this information shall be readily accessible at the facility; responses to emergency situations shall include the following:

(a) the location of equipment to be shut down during an emergency and how to safely perform these tasks;

(b) actions to be taken in the event of a fire, flooding, a spill, or a release of regulated substances;

(c) a site diagram; and

(d) a list of whom to notify or call during or after an emergency situation.

B. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration Piping Systems"*;

(2) *American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"*; or

(3) *Steel Tank Institute Standard SP001, "Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids"*; or

C. Owners and operators may submit to the department for approval an alternate plan which contains all the information requested in this section.

D. Owners and operators of storage tank systems that have been placed in temporary closure in compliance with 20.5.115.1501 NMAC shall not be required to have an operations and maintenance plan, unless one or both of the following conditions is present:

(1) the storage tank contains greater than one inch of regulated substance; or

(2) the storage tank system has steel components that are in contact with an electrolyte, such as soil, water or concrete. [20.5.110.1001 NMAC - N, 07/24/2018]

20.5.110.1002 OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT OF SECONDARY CONTAINMENT FOR ASTS:

A. Owners and operators shall operate, maintain and repair secondary containment in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

B. Owners and operators shall not store inside the secondary containment any material which is chemically reactive with the regulated substance stored in the AST system, or with the AST itself. Owners and operators shall not store any material in the secondary containment that reduces the capacity of the secondary containment below the requirements in 20.5.109.904 NMAC.

C. Owners and operators shall draw off any accumulation of liquid in the secondary containment, including all sumps, within one week of the accumulation, and shall remove any other debris that has accumulated inside the secondary containment. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen. If gravity drain valves are used to remove the accumulated liquid from the secondary containment, owners and operators shall keep all valves closed except during the process of draining the accumulated liquid.

D. In order to maintain the highest level of secondary containment in case of a discharge from, or an overflow of, an AST system, owners and operators shall

keep the spill containment buckets, catchment basins, containment sumps, basin sumps, and piping trenches free of water, regulated substances and debris.

E. Owners and operators shall, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department:

(1) maintain, repair and replace any concrete secondary containment systems; and

(2) repair all significant cracks in the floors and walls of concrete secondary containment systems.

F. Owners and operators shall use one or more of the following to comply with the concrete secondary containment system repair requirements in Subsection E above:

(1) *Society of Protective Coating and National Association of Corrosion Experts SSPC-TU2/NACE 6G197, "Design, Installation and Maintenance of Coating Systems for Concrete used in Secondary Containment"*;

(2) *American Concrete Institute 224R, "Control of Cracking in Concrete Structures"*; or

(3) *American Concrete Institute "Concrete Repair Manual"*.

G. Owners and operators shall maintain, repair and replace any geo-synthetic liner according to manufacturer's instructions, which owners and operators shall keep readily available at the facility for the life of the liner.

H. Owners and operators shall protect from corrosion any secondary containment constructed of steel, and shall cathodically protect any portion of the steel secondary containment that is in contact with an electrolyte, including soil or water. Owners and operators shall maintain the exterior of any steel secondary containment in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized

association or independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *Society of Protective Coatings SSPC-PA-1, "Shop, Field, and Maintenance Painting of Steel"*.

I. Owners and operators of above ground storage tanks which are either double-walled or which have an interstitial space that is monitored as a method of release detection shall comply with the following applicable requirements:

(1) where design and release detection method allow the interstice of a double-walled above ground storage tank to be visually inspected without disturbance of the release detection system, owners and operators shall monthly visually inspect for the presence of water, regulated substances or debris;

(2) if testing conducted in accordance with 20.5.109, 20.5.110 or 20.5.111 NMAC indicates that the stored regulated substance is leaking into the interstice of the AST, then owners and operators shall have the tank repaired in accordance with the tank manufacturer's instructions or specifications, or with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. Also, owners and operators shall ensure the repair is conducted in accordance with the requirements in 20.5.110.1010 NMAC;

(3) owners and operators shall monitor all vertical ASTs with an interstitial space between the tank bottom and secondary containment for the presence of water or regulated substances; if gravity drain valves are used for monitoring and removal of water or regulated substances, owners and operators shall keep them closed except during the process of monitoring and draining;

(4) owners and operators shall keep all sumps associated with interstitial monitoring free of water;

(5) owners

and operators shall annually inspect and test all sensors used to monitor interstitial spaces, in accordance with manufacturer's testing protocol, or in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; and

(6) owners and operators shall remove any liquid found in interstitial spaces, and dispose of it properly.

J. Owners and operators shall operate, maintain, and repair containment sumps on AST systems in order to prevent any leaks or spills in the containment area from entering the environment.

K. Under-dispenser containment must allow for visual inspection and access to the components in the containment system or be periodically monitored for liquid in the sump in accordance with 20.5.110.1008 NMAC.

L. Containment sumps shall be maintained to meet requirements in 20.5.110.1007 NMAC.

[20.5.110.1002 NMAC - N, 07/24/2018]

20.5.110.1003 OPERATION, REPAIR, AND MAINTENANCE OF VAULTS:

A. Owners and operators shall operate, maintain and repair the walls and floor of a vault in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Society of Protective Coating and National Association of Corrosion Experts SSPC-TU2/NACE 6G197, "Design, Installation and Maintenance of Coating Systems for Concrete Used in Secondary Containment"*;

(2) *American Concrete Institute 224R, "Control of*

Cracking in Concrete Structures"; or
(3) *American Concrete Institute, "Concrete Repair Manual"*.

B. Owners and operators shall visually inspect the interior of any vault from the outside monthly, and annually shall enter and inspect the interior of the vault. Owners and operators shall draw off any liquid that has accumulated in a vault within one week of any accumulation of liquid if the liquid is in contact with the tank or piping (but need not draw off liquid only in contact with a tank's saddles, skid or other support), and shall remove any other debris that has accumulated inside the vault and which is in contact with the tank, piping or saddle, skid or other support. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. If a sump is located in the vault, owners and operators shall keep the liquid trap free of water and debris. Owners and operators shall not install any valves in any sump in a vault.

C. Owners and operators shall not store inside a vault any material which is chemically reactive with the regulated substance stored in the AST system, or with the AST itself.

D. Owners and operators shall ensure that a vault is well vented before any fuel transfer begins, and shall keep open all vents during the transfer.

E. For vaults with roofs, owners and operators shall properly maintain and repair the roof of a vault in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

[20.5.110.1003 NMAC - N, 07/24/2018]

20.5.110.1004 OPERATION, REPAIR, AND MAINTENANCE

OF VENTING SYSTEMS: Owners and operators shall operate, maintain and repair venting systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. At least monthly, owners and operators shall check emergency vents to ensure they are operational. The following shall be used to comply with this requirement: *National Fire Protection Association Standard 91, "Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids"*.

[20.5.110.1004 NMAC - N, 07/24/2018]

20.5.110.1005 OPERATION AND MAINTENANCE OF SPILL AND OVERFILL PREVENTION:

Owners and operators shall ensure that releases due to spilling or overfilling do not occur.

A. Owners and operators shall ensure that the volume available in a tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. Owners and operators shall comply with the transfer procedures described in the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with this requirement:

(1) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages"*;

(2) *International Code Council, "International Fire Code"*;

(3) *Petroleum Equipment Institute Publication RP600, "Recommended Practices for Overfill Prevention for Shop-*

Fabricated Above Ground Tanks"; or
(4) *American Petroleum Institute Standard 2350, "Overfill Protection for Storage Tanks in Petroleum Facilities"*.

B. For additional guidance on Subsection A, see the following:

(1) *National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids"*;

(2) *American Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles"*;

(3) *American Petroleum Institute Publication 1621, "Bulk Liquid Stock Control at Retail Outlets"*; or

(4) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Codes"*.

C. Owners and operators of AST systems shall ensure that spill prevention equipment required in 20.5.109.910 NMAC is liquid tight, maintained, and fully operational at all times. In order to ensure the equipment meets these requirements, owners and operators shall no later than three years after the effective date of these regulations meet the following requirements:

(1) Spill prevention equipment installed where the outer and inner walls along with bottom of the equipment are clearly visible shall be either monitored monthly or tested every three years. A liquid, pressure, or vacuum test method shall be used in accordance with one of the following:

(a) the equipment *manufacturer's* developed and published testing requirements;

(b) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*; or

(c) the current edition of another industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

(2) Spill prevention equipment installed where the outer walls and the bottom are not visible shall be tested by a liquid, pressure, or vacuum test method every three years in accordance with one of the documents in Paragraph (1) of this subsection.

(3) Factory installed spill prevention equipment installed as an integral component of a double walled storage tank system shall either be tested every three years in accordance with Paragraph (1) of this subsection or, where a leak in the spill prevention equipment can be detected in the interstice of the tank, owners and operators shall monitor the interstice of the tank every 30 days.

(4) Spill prevention equipment that either fails when tested or is found to be damaged during monthly monitoring shall be repaired or replaced in accordance with 20.5.110.1010 NMAC.

(5) A report shall be produced which includes the results of any vacuum, pressure, or liquid testing conducted on spill prevention equipment and the report shall be submitted to the department in accordance with the requirements in 20.5.110.1016 NMAC and maintained in accordance with the requirements in 20.5.110.1015 NMAC.

(6) Records of the monthly monitoring and testing required in this subsection shall be maintained in accordance with 20.5.110.1015 NMAC.

D. Owners and operators of AST systems shall ensure that overfill prevention equipment required in 20.5.109.910 NMAC is maintained and fully operational at all times. In order to ensure the equipment meets these requirements, owners and operators shall, no later than three years after the effective date of these regulations, and every

three years thereafter have the overfill prevention equipment inspected or tested and shall meet the following:

(1)

The inspection shall verify the equipment meets the requirements in 20.5.109.910 NMAC, and if the equipment fails to meet these requirements, it shall be repaired, replaced, or re-installed. The repair, replacement, or re-installation shall be in accordance with the manufacturer's instructions or the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(2) Drop tube

style overfill prevention equipment shall be removed from the tank for the inspection;

(3) Owners

and operators shall ensure the inspections or tests are performed in accordance with the methods and procedures listed in one of the following:

(a)

Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities", or

(b)

testing requirements developed and published by the overfill prevention equipment manufacturer;

(4) If more

than one type of overfill prevention equipment is installed on an AST, owners and operators shall ensure that none of them will interfere with the proper operation of any of the others; and

(5) A report

shall be produced which includes the results of any inspections or testing conducted on overfill prevention equipment and the report shall be submitted to the department in accordance with the requirements in 20.5.110.1016 NMAC and maintained in accordance with the requirements in 20.5.110.1015 NMAC.

E. Owners and

operators shall report, investigate, and

clean up any spills and overfills in accordance with 20.5.118 NMAC.

F. Owners and

operators of a storage tank system that meets the requirements for temporary closure and the tank is empty as defined in 20.5.115.1501 NMAC shall not be required to periodically test the spill and overfill prevention equipment.

G. Owners and

operators of storage tank systems shall ensure tests of all spill and overfill prevention equipment as required in this section are performed by a qualified tester. The requirements for testers can be found in 20.5.105 NMAC.

[20.5.110.1005 NMAC - N, 07/24/2018]

20.5.110.1006 OPERATION AND MAINTENANCE OF CORROSION PROTECTION:

Owners and operators of metal storage tank systems with any metal tank or piping with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented until the storage tank system is permanently closed or undergoes a change in service pursuant to 20.5.115 NMAC.

A. Owners and

operators shall operate and maintain corrosion protection systems to continuously provide corrosion protection to all metal components of the system that routinely contain regulated substances and are in contact with an electrolyte, to include soil or water. Owners and operators shall operate and maintain corrosion protection systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) American

Petroleum Institute Publication 651, "Cathodic Protection of Aboveground Petroleum Storage Tanks";

(2) American

Petroleum Institute Publication 652, "Linings of Aboveground Petroleum Storage Tank Bottoms";

(3) American

Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"

(4) National

Association of Corrosion Engineers Publication RP0193, "External Cathodic Protection of On-Grade Carbon Steel Storage Tank Bottoms";

(5) National

Association of Corrosion Engineers Publication SP0169, "Standard Practice for Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

B. Owners and

operators shall ensure that all storage tank systems equipped with cathodic protection are inspected for proper operation by a qualified corrosion expert in accordance with the following requirements:

(1) Frequency:

owners and operators shall test all cathodic protection systems as follows:

(a)

within six months of installation and at least every three years thereafter;

(b)

within six months of a modification or repair; or

(c)

another reasonable time frame approved in advance in writing by the department;

(2) Inspection

criteria: the criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(3) Owners

and operators of storage tank systems shall provide the department a report on the cathodic protection system test that includes the following:

(a)

name of facility, facility address, and facility ID number issued by the department;

(b)

name of the technician who performed the test;

(c)

certification of the technician in the type of test performed, including certification numbers, national association where the certification was obtained, and expiration date of the certification;

(d)

description of cathodic protection system, for example impressed current, galvanic;

(e)

description of storage tank system including tank ID number, product, capacity, tank type, piping, flex connectors;

(f)

type of test conducted, such as: routine three-year test; test within six months of installation; test within six months after repair or modification;

(g)

whether all flex connectors or metal risers that routinely contain a regulated substance and are in contact with an electrolyte are protected from corrosion. If isolation boots, jackets, or other non-corrodible materials are used to protect this equipment from corrosion, it shall be determined if they are still providing protection from corrosion.

(h)

tester's pass/fail evaluation and actions to be taken after evaluation;

(i)

facility drawing of the storage tank system and cathodic protection system, indicating location of test points on the storage tank system, cathodic protection test stations, and reference electrode placement; and

(j)

description of cathodic protection system repair or modification.

(4) Owners

and operators of storage tank systems shall provide the department a report on impressed current systems that includes all requirements listed in 20.5.110.1016 NMAC; and

(a)

rectifier manufacturer, model, serial number, rated direct current output voltage and amperage;

(b)

rectifier tap settings, direct current output voltage and amperage, and hour meter reading;

(c)

description of structure tested, contact point of test lead, and reference electrode placement;

(d)

structure to soil potential with current applied in millivolts;

(e)

structure to soil potential with current interrupted, instant OFF in millivolts;

(f)

100 millivolts polarization shift, end voltage and voltage change; and

(g)

test results.

(5) Owners

and operators of storage tank systems shall provide the department a report on galvanic systems that includes all requirements listed in 20.5.110.1016 NMAC; and

(a)

description of structure tested, contact point of test lead, and reference electrode placement;

(b)

structure to soil potential measured locally in millivolts;

(c)

structure to soil potential measured remotely in millivolts; and

(d)

test results.

(6) Owners

and operators shall use one or more of the following to comply with the requirements of this section:

(a)

National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(b)

National Fire Protection Association Standard 30A "Code for Motor Fuel Dispensing Facilities and Repair Garages";

(c)

American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems";

(d)

American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";

(e)

International Code Council, "International Fire Code";

(f)

NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";

(g)

NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";

(h)

Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs";

(i)

NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or

(j)

NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

C. Owners and

operators shall inspect storage tank systems with impressed current cathodic protection systems every 60 days to ensure the equipment is running properly. Owners and operators shall record the date, time, readings and results of each inspection in a log kept at the facility, and indicate who performed each inspection.

D. Owners and

operators shall monthly inspect any equipment or materials used to isolate metal components of AST systems and shall repair or replace equipment and materials used to meet corrosion protection requirements in this section.

E. For storage tank

systems using cathodic protection, owners and operators shall maintain

records of the operation of the cathodic protection in accordance with 20.5.110.1015 NMAC to demonstrate compliance with the performance standards in this section. These records shall provide the following:

(1) the results of the last three inspections required in Subsection C of this section; and

(2) the results of testing from the last two inspections required in Subsection B of this section.

[20.5.110.1006 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for the cathodic protection system test report required in Subsection B. The form is available on the petroleum storage tank bureau's pages on the department website, or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.110.1007 OPERATION AND MAINTENANCE OF CONTAINMENT SUMPS FOR AST SYSTEMS:

A. Owners and operators shall maintain all containment sumps (including but not limited to under dispenser sumps and transition sumps) and draw off liquid that has accumulated in the containment sumps within one week of the accumulation, and shall remove any other debris that has accumulated inside the containment sumps. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen, and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. If gravity drain valves are used to remove accumulated liquid from the containment sumps, owners and operators shall keep all valves closed except during the process of draining the accumulated liquid.

B. In order to maintain the highest level of secondary containment in case of a discharge from, or an overflow of, an AST system,

owners and operators shall keep the containment sumps and basin sumps free of water, regulated substances, and debris.

C. Owners and operators shall maintain all containment sumps associated with interstitial monitoring of underground piping; the sumps shall be liquid tight and kept free of water.

D. Owners and operators of AST systems with single walled containment sumps associated with interstitial monitoring shall have the integrity of the sumps tested no later than three years after the effective date of these regulations, and every three years thereafter, in accordance with the following:

(1) Hydrostatic or other test methods shall be conducted to ensure the containment sumps are liquid tight including at all penetrations in accordance with one of the following:

(a) the equipment manufacturer's developed and published testing requirements;

(b) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overflow, Leak Detection, and Secondary Containment Equipment at UST Facilities";* or

(c) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(2) Hydrostatic test methods using a test apparatus developed specifically for testing containment sumps shall ensure the containment sumps are liquid tight including at all penetrations and comply with one of the following:

(a) protocols developed by the manufacturer of the test apparatus and the certification as listed on the web site of the national work group on leak detection evaluation;

(b) protocols developed and published by

the manufacturer of the containment sump;

(c) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overflow, Leak Detection, and Secondary Containment Equipment at UST Facilities";* or

(d) an alternate test method approved by the department in writing in advance in accordance with the requirements for Alternate Methods Requests in 20.5.110.1014 NMAC.

(3) A low liquid level hydrostatic test method may be conducted if all of the following conditions are met:

(a) test method used shall be in accordance with the following:

(i) the liquid level meets the third-party certification for the sensor installed in the sump;

(ii) the duration of the test shall be a minimum of one hour unless a different test period is specified by the containment sump manufacturer or in (iii) below;

(iii) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(b) either a hydrostatic test shall be conducted every 12 years in accordance with Paragraph (1) and (2) of Subsection D or a site check shall be conducted every 12 years in accordance with in Subsection B of 20.5.118.1801 NMAC.

(c) a sump sensor that automatically shuts off equipment associated with the sump and meets the requirements for placement and testing of sensors used for interstitial monitoring in Subparagraph (b) of Paragraph (3) of Subsection A of 20.5.111.1106 NMAC;

(4) A low liquid level test per Paragraph (3) of

this subsection shall not be conducted if the following conditions exist:

(a) a liquid is discovered in the sump or evidence is found that a liquid has been at a level equal to or higher than the lowest penetration in the sump; then testing has to be conducted in accordance with Paragraph (1) of this subsection;

(b) sensors in containment sumps are discovered to be located higher than the lowest part of the sump; then a test shall be conducted in accordance with Paragraph (1) of this subsection and owners and operators shall report and investigate a suspected release in accordance with the requirements in 20.5.118 NMAC; or

(c) a site check conducted in accordance with Paragraph (3) of this subsection indicates there has been a release from the containment sump.

E. Owners and operators of AST systems with double-walled containment sumps associated with interstitial monitoring shall have the integrity of the sumps tested no later than three years from the effective date of these regulations, and every three years thereafter, in accordance with one of the following:

(1) interstices under vacuum, pressure, or brine filled, are continuously monitored by use of interstitial sensors or visually inspected every 30 days, and the monitoring records are maintained in accordance with 20.5.110.1015 NMAC. Owners and operators shall ensure that annual functionality testing or annual inspections of the monitoring equipment are conducted in accordance with 20.5.111.1104 NMAC. Owners and operators who cannot demonstrate that the interstices of the containment sumps are continuously monitored or inspected every 30 days shall have the sumps tested in accordance with Subsection D above; or

(2) containment sumps with dry interstices that are not continuously monitored are integrity tested in accordance with Subsection D of

20.5.110.1007 NMAC.

F. All sensors and equipment used to monitor containment sumps and their interstices shall be functionality tested annually in accordance with 20.5.111.1104 NMAC.

G. A report shall be produced which includes the results of the testing, and the report shall be submitted in accordance with 20.5.110.1016 NMAC and maintained in accordance with the requirements in 20.5.110.1015 NMAC.

H. Owners and operators of storage tank systems shall ensure that tests of containment sumps as required in this section are performed by qualified testers. The requirements for testers can be found in 20.5.105 NMAC.

I. Owners and operators of storage tank systems shall dispose of water or other test media used in testing of components of petroleum storage tank systems, or any accumulated liquid with a visible sheen, and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. Owners and operators who temporarily store the test media or water on-site shall do so in accordance with all federal, state, and local statutes, ordinances, and regulations.

[20.5.110.1007 NMAC - N, 07/24/2018]

20.5.110.1008 PERIODIC OPERATION AND MAINTENANCE WALK-THROUGH INSPECTIONS:

A. Owners and operators shall conduct walk-through inspections that, at a minimum, check equipment as specified below:

(1) For spill and overfill prevention equipment, every 30 days (exception: spill prevention equipment at AST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):

- (a) visually check all spill and overfill prevention equipment for damage;
- (b)

remove liquid or debris;

(c) check for and remove obstructions in the fill pipe;

(d) check the fill cap to make sure it is securely on the fill pipe; and

(e) for double walled spill prevention equipment with interstitial monitoring, check for liquid or a leak in the interstitial area; and

(f) check overfill prevention equipment for proper operation and determine whether maintenance is required.

(2) For release detection equipment, every 30 days:

(a) check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and

(b) ensure records of release detection testing are reviewed and current.

(3) For containment sumps, every 30 days:

(a) visually check the containment sump for damage, liquid in the containment area, and releases to the environment;

(b) remove liquid and debris in containment sumps; and

(c) for double walled sumps with interstitial monitoring, check for liquid or a leak in the interstitial area.

(4) Annually: check hand held release detection equipment, such as, but not limited to, tank gauge sticks for operability and serviceability;

B. Owners and operators shall conduct these walk-through inspections in accordance with one of the following:

(1) the current edition of a national code of practice or standard developed by a nationally recognized association or independent testing laboratory that checks equipment included in Subsection A of 20.5.110.1008 NMAC; or

(2) a checklist developed by the department.

C. If monthly visual

checks of containment sumps are not being conducted or records of the checks cannot be produced, a test in accordance with Subsection D of 20.5.10.1007 NMAC shall be conducted within 30 days of failing to meet the requirement for monthly monitoring of the equipment.

D. Owners and operators must maintain records of operation and maintenance walkthrough inspections in accordance with 20.5.110.1015 NMAC. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries. [20.5.110.1008 NMAC - N, 07/24/2018]

20.5.110.1009

COMPATIBILITY: Owners and operators shall use a storage tank system made of or lined with materials that are compatible with the substance stored in the storage tank system.

A. Owners and operators must notify the department at least 30 days prior to changing the substance in any of their tanks to a regulated substance containing greater than ten percent ethanol, greater than twenty percent biodiesel, or any other regulated substance identified by the department.

B. In addition, owners and operators with storage tank systems storing these regulated substances must meet one of the following:

(1) demonstrate compatibility of the storage tank system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment). Owners and operators may demonstrate compatibility of the storage tank system by using one of the following options:

(a) certification or listing of storage tank

system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

(b) equipment or component manufacturer approval. The manufacturer's approval must be in writing, include an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer.

(2) for storage tank systems or system components that contain, but are not compatible with, one of the regulated substances listed in Subsection A of 20.5.110.1009 NMAC, or for those storage tank systems where compatibility cannot be determined, remove all regulated substances from the tank system by the effective date of these regulations, and comply with one of the following:

(a) replace the storage tank system or system components in accordance with the requirements for a new storage tank system in 20.5.109 NMAC;

(b) prior to putting the tank back in service, modify the storage tank system in accordance with 20.5.110.1010 NMAC and one of the following:

(i) install an internal lining in the tank, in accordance with the lining manufacturer's installation instructions, to address compatibility issues; or

(ii) comply with tank or equipment manufacturer's instructions;

(c) change the regulated substance stored to one that is compatible with the storage tank system; or

(d) permanently close the storage tank system within 12 months of the effective date of these regulations in accordance with the permanent closure requirements in 20.5.115.1502 NMAC; or

(3) use another option determined by the department to be no less protective of human health and the environment than the options listed in this section.

C. Owners and operators must maintain records documenting compliance with this section for as long as the storage tank system is used to store the regulated substance.

D. Owners and operators shall use the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department to comply with the compatibility requirements of this section. *American Petroleum Institute Recommended Practice RP 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations"* shall be used to comply with the requirements of this section as they pertain to storage of ethanol blends.

[20.5.110.1009 NMAC - N, 07/24/2018]

20.5.110.1010 REPAIRS, REPLACEMENTS AND MODIFICATIONS:

Owners and operators of a storage tank system shall ensure that repairs, replacements, and modifications will prevent releases due to structural failure or corrosion as long as the storage tank system is used to store regulated substances. Owners and operators shall remove all regulated substances from a storage tank system when a release has been confirmed until it is repaired or replaced in accordance with the requirements of this section.

A. Determining whether repair, replacement or modification is necessary. Owners and operators shall determine whether a repair, replacement or modification to a storage tank system is necessary in consultation with a department inspector, after providing notice required by this part.

(1) If owners and operators are repairing, replacing

or modifying piping of any kind that is connected to a storage tank, the determination shall be made during an on-site inspection that provides the inspector the opportunity to view the piping while it is exposed.

(2) If, during an on-site inspection, the inspector determines that:

(a) any steel piping connected to a tank indicates corrosion; or

(b) any non-corrodible piping connected to a tank shows signs of deterioration or failure,

(3) Then the owner and operator shall replace all piping connected to that tank, and shall inspect all other piping at the same facility that is made of the same material to determine its condition prior to returning the facility to operation.

B. Owners and operators shall properly conduct repairs, replacements and modifications to storage tank systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and in accordance with the manufacturer's instructions and recommended practices. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(2) *American Petroleum Institute Recommended Practice RP 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines";*

(3) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";*

(4) *Petroleum Equipment Institute Publication RP200, "Recommended Practices for Installation of Above Ground Storage*

Systems for Motor Vehicle Fueling";
(5) *American Society for Testing and Materials ES40, "Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection";*

(6) *American Petroleum Institute 570, "Piping Inspection Code: Inspection, Repair, Alteration and Rerating of In-Service Piping Systems";*

(7) *American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction";*

(8) *American Society of Mechanical Engineering Standard B31.1, "Process Piping";*

(9) *International Code Council, "International Fire Code";*

(10) *National Leak Prevention Association Publication RP823, "Standard for Preventative Maintenance, Repair, and In-situ Construction of Petroleum Sumps";*

(11) *Petroleum Equipment Institute Publication RP100 "Recommended Practices for the Installation of Underground Storage Tank Systems for Motor Vehicle Fueling";*

(12) *Petroleum Equipment Institute Publication RP800 "Recommended Practices for Installation of Bulk Storage Plants";*

(13) *Petroleum Equipment Institute Publication RP1000 "Recommended Practices for the Installation of Marina Fueling Systems";*

(14) *Petroleum Equipment Institute Publication RP1300 "Recommended Practices for the Design, Installation, Service, Repair, and Maintenance of Aviation Fueling Systems";* or

(15) *Petroleum Equipment Institute Publication RP1400 "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems".*

C. Owners and

operators shall not internally line ASTs as a means of repair.

D. Owners and operators shall tightness test a storage tank system that has been replaced, modified or repaired, prior to returning the system to service, in accordance with 20.5.111.1101 NMAC and Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.111.1105 NMAC except as provided below:

(1) the repaired or modified tank is internally inspected in accordance with the current edition of an industry standard or code of practice approved in advance by the department; or

(2) owners and operators shall use an equivalent test method, which complies with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department.

E. Upon completion of a modification or repair of any cathodically protected storage tank system, owners and operators shall test the cathodic protection system in accordance with 20.5.110.1006 NMAC to ensure that it is operating properly.

F. Owners and operators of a storage tank system shall maintain records of each repair, replacement and modification until the storage tank system is permanently closed pursuant to 20.5.115 NMAC.

G. Owners and operators shall repair an above ground storage tank if an internal inspection determines that a release is occurring or that the tank bottom or shell thickness is below minimum thickness requirements. Owners and operators shall keep the records of internal inspections for the life of the tank. Minimum thickness requirements shall be determined by one of the following:

(1) manufacturer's specifications;

(2) current edition of an industry standard or code of practice developed by a nationally

recognized association or independent testing laboratory approved in advance by the department; or

(3) minimum thickness for the tank bottom shall never be less than one half of the original bottom plate thickness and minimum thickness for the tank shall never be less than one-tenth inch.

H. Owners and operators shall meet all applicable installation requirements of 20.5.109 NMAC, including testing requirements, when repairing, replacing or modifying a storage tank system involves installing new components. If any tank or piping of a tank system is replaced, owners and operators shall follow all requirements for properly assessing the site for contamination in compliance with 20.5.115 NMAC prior to installing the new components.

I. Repairs to secondary containment of tanks, piping and containment sumps must be tested for tightness according to the manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or according to requirements established by the implementing agency within 30 days following the date of completion of the repair.

J. Within 30 days following any repair to spill or overflow prevention equipment, the repaired spill or overflow prevention equipment must be tested or inspected, as appropriate, in accordance with 20.5.110.1005 NMAC to ensure it is operating properly.

[20.5.110.1010 NMAC - N, 07/24/2018]

20.5.110.1011 INSPECTIONS, MONITORING AND TESTING:

A. For the purpose of enforcing the provisions of these regulations, all owners and operators of storage tanks shall, upon the request of the secretary or authorized department representatives, furnish information relating to such tanks, including tank equipment and contents, conduct monitoring or testing, and permit any department

representative at all reasonable times to have access to, and to copy all records relating to such tanks.

Owners and operators shall comply with all applicable and appropriate Occupational Health and Safety Act requirements, Sections 50-9-1 through 50-9-25 NMSA 1978, so that storage tanks may be safely inspected. For the purpose of enforcing these regulations, department officers, employees, or representatives are authorized to:

(1) enter at reasonable times any establishment or place where a storage tank is located;

(2) inspect the storage tank system and obtain samples of its contents;

(3) conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater; and

(4) retrieve all data from any electronic release detection equipment or device.

B. The department shall commence and complete each inspection with reasonable promptness. If the secretary or department representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.

C. Owners and operators shall permit the department or authorized department representative to be present at and inspect all storage tank system installations, replacements, repairs, substantial modifications, installations of leak detection systems and storage tank system closures.

D. Owners and operators shall not intentionally delete any history from any electronic release detection equipment or device. [20.5.110.1011 NMAC - N, 07/24/2018]

20.5.110.1012 REQUIRED NOTIFICATION PRIOR TO REPLACEMENT, REPAIR AND MODIFICATION: To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the replacement, repair, and modification of the storage tank system are to take place. Notice need not be provided for normal maintenance. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

A. For replacements, modifications (including internal lining or changes to cathodic protection systems), and repairs, the term "critical junctures" means:

(1) completion of pouring a concrete pad or footings;

(2) completion of the excavation of existing piping;

(3) actual performance of the repair, lining, or modification;

(4) any time during the project in which components of piping are connected;

(5) any time during the project in which a tank, its associated piping, spill prevention equipment, or secondary containment sumps are tested; and

(6) any time during the project when overflow prevention equipment is inspected to ensure it meets the requirements in 20.5.110.1005 NMAC.

B. Owners, operators and certified tank installers shall give at least 30 days written notice before the replacement, modification or repair of a storage tank system. Owners and operators shall also give at least 30 days written notice before the application of a secondary containment coating. It may not be feasible for owners, operators, and certified tank installers to provide advance notice of emergency repairs; however, owners, operators, and certified tank installers shall provide

notice of emergency repairs as soon as possible after completing emergency repairs. At a minimum, the notice for replacements, modifications, and repairs shall contain the following information:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county), and telephone number;
- (3) owner name, owner ID number, address, and telephone number;
- (4) contractor name, address, and telephone number;
- (5) description of type of replacement, modification or repair to be performed (such as spill containment, overfill prevention, release detection, piping or other);
- (6) expected date on which replacement, modification or repair will be performed;
- (7) whether any part of the system is within 1,000 feet of a community water system or a potable drinking water well; and
- (8) signature of owner, operator or an authorized representative.

C. In addition to the written notices described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

D. If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.110.1012 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used for notification of replacement, repair and modification. The form is available on the petroleum storage tank

bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Santa Fe, NM 87505.]

20.5.110.1013 DEPARTMENT REVIEW AND APPROVAL OF PLANS, INSTALLATION, OPERATION, AND MAINTENANCE:

Owners and operators shall view any inspection, review or approval by the department as permission to proceed in accordance with all applicable rules, codes and standards. Review and approval by the department shall not relieve any owner, operator, or certified tank installer of his responsibility for compliance. If the department overlooks any deficiencies or violations in the course of plan review or inspection provided in 20.5 NMAC, the department may later require correction and compliance. [20.5.110.1013 NMAC - N, 07/24/2018]

20.5.110.1014 ALTERNATE METHODS:

A. If owners and operators want to operate, maintain, replace, repair or modify any part of a storage tank system with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin to operate, maintain, replace, repair or modify the system, unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to

regulation for which alternate method or material (such as type of piping) is requested;

(5) brief description of the proposed alternate method or material;

(6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and

(7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

B. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.110.1014 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used to request approval of an alternate method. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, NM 87505.]

20.5.110.1015 RECORD KEEPING:

A. Owners and operators shall maintain the following information for the life of the storage tank system:

- (1) documentation of operation of corrosion protection equipment that demonstrates compliance with 20.5.110.1006 NMAC;
- (2) documentation of storage tank system repairs, replacements and modifications that demonstrate compliance with 20.5 NMAC;
- (3) documentation of compliance with release detection requirements in accordance with 20.5.11 NMAC;
- (4) inspection logs required by 20.5.110 NMAC and 20.5.111 NMAC;
- (5) tank

tightness, internal inspection and integrity test documents required by 20.5 NMAC;

- (6) any document approving any alternate method;
- (7) spill and overfill prevention equipment testing/inspection records;
- (8) containment sump testing records;
- (9) documentation of compatibility for AST systems;
- (10) documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping;
- (11) documentation of periodic walkthroughs;
- (12) documentation of operator training in accordance with 20.5.104 NMAC;
- (13) the operation and maintenance plan and related documentation as required by 20.5.10.1001 NMAC; and
- (14) any other record or written approval required in 20.5 NMAC.

B. Availability and maintenance of records. Owners and operators shall keep the required records for the operational life of a tank, piping and tank system either:

- (1) at the storage tank site and immediately available for inspection by the department; or
- (2) at a readily available alternative site and the records shall be provided for inspection to the department upon request; if records are not available at a site during inspection, owners and operators shall send to the inspector within 10 working days all records requested by the inspector.

C. Owners and operators shall maintain permanent closure records required under 20.5.115 NMAC. Owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an

alternative site as indicated above.

D. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this section; however, both parties are liable in the event of noncompliance. [20.5.110.1015 NMAC - N, 07/24/2018]

20.5.110.1016 REPORTING:

Owners and operators of a storage tank system shall cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator.

A. Owners and operators shall provide the following information to the department:

(1) registration for all storage tank systems in accordance with 20.5.102 NMAC, which includes certification of installation for new AST systems in accordance with Subsection C of 20.5.109.919 NMAC;

(2) reports of all releases in accordance with 20.5.102 NMAC and the requirements in 20.5.18 NMAC for reporting suspected releases, spills and overfills and confirmed releases;

(3) corrective actions planned or taken as required by 20.5.119 NMAC and 20.5.200 NMAC;

(4) notification before storage tank system installation, replacement, repair or modification in accordance with 20.5.109 NMAC and 20.5.110 NMAC; notification when any person assumes ownership of a storage tank system in accordance with 20.5.102 NMAC and notification before permanent closure or change in service in accordance with 20.5.115 NMAC; it may not be feasible for owners and operators to provide advance notice of emergency repairs; however, owners and operators shall provide notice of emergency repairs as soon as possible after completing emergency repairs;

(5) notification prior to storage tank systems changing

to certain regulated substances in accordance with Subsection A of 20.5.110.1009 NMAC; and

(6) updated project drawings for any addition, replacement or modification of a storage tank system.

B. Owners and operators shall provide to the department all reports as required in 20.5.110 NMAC within 60 days of completion of the tests.

C. Owners and operators shall report any failed tests or inspections to the department within 24 hours of completion of the test or inspection in accordance with 20.5.118.1801 NMAC.

D. Owners and operators shall ensure all reports required in 20.5.110 NMAC contain, at a minimum, the following:

- (1) facility name and address;
- (2) facility ID number;
- (3) owner and operator name and address;
- (4) owner ID number;
- (5) date report was completed;
- (6) date of the test;
- (7) duration of the test;
- (8) brand name and model number of equipment being tested or sufficient description to allow identification of the equipment;
- (9) type of equipment being tested;
- (10) type of test, including test procedures and methods;
- (11) results of the test;
- (12) name of the person who performed the inspection or test, and their qualifications as specified in 20.5.105 NMAC;
- (13) name of the regulated substance stored in the tank associated with the equipment being tested; and
- (14)

for the inspections and testing of spill prevention equipment, overfill prevention equipment, and containment sumps, include the information from the following forms, as applicable, from *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*:

(a) *"Spill Bucket Integrity Testing, Hydrostatic Test Method, Single and Double-Walled Vacuum Method"*;

(b) *"Containment Sump Integrity Testing, Hydrostatic Testing Method"*;

(c) *"UST Overfill Equipment Inspection, Automatic Shutoff Device and Ball Float Valve"*; or

(d) *"Automatic Tank Gauge Operation Inspection"*.
[20.5.110.1 NMAC - N, 07/24/2018]

HISTORY OF 20.5.110 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 9/12/88.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 2/14/89.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 8/4/89.

EIB/USTR-5, Underground Storage Tank Regulations-Part V-General Operating Requirements, filed 6/12/90.

History of Repealed Material:
20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements (filed 2/27/97), repealed 8/15/03.
20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 7/16/03) repealed

4/4/08.
20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 4/4/08) repealed 7/24/18.

Other History:
EIB/USTR-5, Underground Storage Tank Regulations - Part V - General Operating Requirements, filed 6/12/90, renumbered, reformatted and replaced by 20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements, effective 11/5/95;
20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements filed 10/6/95 replaced by 20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements, effective 4/1/97;
20 NMAC 5.5, Underground Storage Tanks - General Operating Requirements, filed 2/27/97 was renumbered, reformatted and replaced by 20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements, effective 8/15/03.
20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 7/16/03) replaced by 20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements, effective 4/4/08.
20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 4/4/08) was renumbered, reformatted, and replaced by 20.5.110 NMAC, Petroleum Storage Tanks, General Operating Requirements for Above Ground Storage Tanks, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 111 RELEASE
DETECTION FOR ABOVE
GROUND STORAGE TANK**

SYSTEMS

20.5.111.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[20.5.111.1 NMAC - N, 07/24/2018]

20.5.111.2 SCOPE: This part applies to owners and operators of above ground storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance. Release detection requirements for above ground storage tank emergency generator systems are listed in 20.5.112 NMAC.
[20.5.111.2 NMAC - N, 07/24/2018]

20.5.111.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.
[20.5.111.3 NMAC - N, 07/24/2018]

20.5.111.4 DURATION: Permanent.
[20.5.111.4 NMAC - N, 07/24/2018]

20.5.111.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.111.5 NMAC - N, 07/24/2018]

20.5.111.6 OBJECTIVE: The purpose of 20.5.111 NMAC is to ensure that releases from above ground storage tanks are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.
[20.5.111.6 NMAC - N, 07/24/2018]

20.5.111.7 DEFINITIONS:

The definitions in 20.5.101 NMAC apply to this part.
[20.5.111.7 NMAC - N, 07/24/2018]

20.5.111.8 to 20.5.111.1099
[RESERVED]

20.5.111.1100 REQUIREMENTS AND DEADLINES FOR RELEASE DETECTION FOR AST SYSTEMS:

A. Owners and operators of new and existing AST systems shall monitor monthly for releases using a method, or combination of methods, of release detection that can detect a release from any portion of the tank, connected piping and ancillary equipment that routinely contains a regulated substance and meets the following:

- (1) the method:
 - (a) meets the performance requirements in 20.5.111 NMAC;
 - (b) is installed and calibrated in accordance with the manufacturer’s instructions;
 - (c) is operated and maintained in accordance with one of the following, beginning on the effective date of these regulations:
 - (i) manufacturer’s instructions;
 - (ii) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; or
 - (iii) an approved method that has been determined by the implementing agency to be no less protective of human health and the environment than Subparagraph (a) and (b) of Subsection (1) above; and
 - (d) has electronic and mechanical components that are tested to ensure proper operation; or
- (2) the method meets all the requirements for visual inspections in 20.5.111.1102 NMAC.

B. Owners and operators of AST systems shall meet release detection requirements as follows:

- (1) for AST systems installed on, or before, August 14, 2003 must have met release detection requirements no later than August 15, 2004; and
- (2) for AST systems installed on, or after, August 15, 2003 must meet release detection requirements upon installation.

C. For existing AST systems installed before July 1, 1991, or where the installation date is unknown, owners and operators shall perform either a tightness test, or an internal inspection on the AST system by August 15, 2004. The tightness test or internal inspection shall be conducted in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, and shall be approved in advance by the department. If a tightness test or internal inspection shows that an AST system has a suspected release, then owners and operators shall comply with the requirements of 20.5.118 NMAC. Owners and operators shall use one or more of the following, as applicable, to comply with the above testing requirements:

- (1) *American Petroleum Institute Specification 12F: “Shop-welded Tanks For Storage Of Production Liquids”;*
- (2) *American Petroleum Institute Standard 650, “Welded Tanks for Oil Storage”*, with applicable addenda;
- (3) *American Petroleum Institute Standard 653, “Tank Inspection, Repair, Alteration, and Reconstruction”;*
- (4) *Petroleum Equipment Institute RP200, “Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling”;*
- (5) *Underwriter’s Laboratories Standards: UL 142, “Standard for Steel Aboveground Tanks for Flammable and Combustible*

Liquids”; or

(6) *Steel Tank Institute Standard SP001, “Standard for the Inspection of Aboveground Storage Tanks”.*

D. Owners and operators shall ensure that any person who performs a test on their AST system in order to meet the requirements of 20.5.111 NMAC shall comply with the requirements in 20.5.105 NMAC.

E. Owners and operators shall ensure that equipment used to perform a test on their storage tank system is calibrated and maintained according to the manufacturer’s requirements.

F. When a release detection method operated in accordance with the performance standards in 20.5.111 NMAC indicates a release may have occurred, owners and operators shall notify the department in accordance with 20.5.102.204 and 20.5.118 NMAC.

G. Owners and operators shall meet permanent closure requirements in 20.5.115 NMAC for any existing AST system to which an owner and operator cannot apply a method of release detection that complies with the requirements of 20.5.111 NMAC. [20.5.111.1100 NMAC - N, 07/24/2018]

20.5.111.1101 REQUIREMENTS FOR INTEGRITY TESTING OR TANK TIGHTNESS TESTING OF ASTS:

A. Owners and operators shall perform a tightness test or internal inspection of ASTs 10 years after installation, unless the AST is in secondary containment that complies with the requirements of 20.5.109 NMAC. Owners or operators shall use one or more of the standards and codes listed in Subsection A of this section, as applicable, to comply with this requirement.

B. Owners and operators of ASTs shall ensure that integrity testing and tank tightness testing:

- (1) detect

a two-tenth gallon per hour leak rate from any portion of the AST that routinely contains a regulated substance while accounting for the effects of thermal expansion or contraction of the regulated substance, vapor pockets, tank deformation, and evaporation or condensation;

(2) comply with manufacturer’s published testing procedures; and

(3) comply with a current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, and shall be approved in advance by the department. Owners and operators shall use one or more of following to comply with the requirements of this section:

(a) *American Petroleum Institute Specification 12F: “Specification for Shop Welded Tanks for Storage of Production Liquids”.*

(b) *American Petroleum Institute Standard 650, “Welded Tanks for Oil Storage”,* with applicable addenda;

(c) *American Petroleum Institute Standard 653, “Tank Inspection, Repair, Alteration, and Reconstruction”;*

(d) *Petroleum Equipment Institute RP200, “Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling”;*

(e) *Underwriter’s Laboratories Standards: UL 142, “Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids”;*

(f) *Steel Tank Institute Standard SP001, “Standard for the Inspection of Aboveground Storage Tanks”;* or

(g) *National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”.* [20.5.111.1101 NMAC - N, 07/24/2018]

20.5.111.1102 VISUAL

INSPECTION REQUIREMENTS FOR ASTS:

A. Owners and operators of ASTs may use visual inspection as a method of release detection if:

(1) all portions of the ASTs, including the AST bottoms, are completely visible, readily accessible and are inspected monthly;

(2) owners and operators maintain a written log of the visual inspections for each AST conducted monthly to include the following:

(a) the date and time the inspection was conducted;

(b) name and signature of the person who conducted the inspection;

(c) comments on the condition of each AST;

(d) the results of each inspection; and

(e) the volume of water found in the AST and if the water has been removed from the tank; and

(3) owners and operators keep visual inspection logs available at the facility.

B. Owners and operators of double-walled and double-bottomed AST systems shall include inspection of the interstice in the monthly visual inspection which shall be recorded in the log required in Paragraph (2) of Subsection A.

Owners and operators of AST systems that use interstitial monitoring with an electronic liquid sensor as their monthly method of release detection in accordance with 20.5.111.1103 NMAC do not have to meet the requirements of this subsection. The monthly inspection of the interstice shall use one of the following methods:

(1) manually stick or gauge the monitoring ports of the tank by use of a tank gauging stick that is calibrated to the nearest one-eighth of an inch;

(2) where the interstice is equipped with a

mechanical float device that will visually signal when a liquid is present in the interstice, inspect the device;

(3) for double-bottomed vertical ASTs with drain valves for the interstice, check for the accumulation of regulated substances or water;

(4) inspect the interstice per manufacturer’s instructions; or

(5) visually inspect vertical ASTs inside secondary containment that meet the requirements of 20.5.109 NMAC where the secondary containment has been constructed so the space between the tank bottom and the concrete floor can be monitored or visually inspected.

[20.5.111.1102 NMAC - N, 07/24/2018]

20.5.111.1103 INTERSTITIAL MONITORING REQUIREMENTS FOR ASTS:

Owners and operators of ASTs may use interstitial monitoring to continuously monitor between the AST and a secondary barrier immediately around and underneath the tank, but only if the AST system meets all of the following requirements:

A. the ASTs are manufactured or upgraded to include a double-walled bottom in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory which can be remotely monitored, or the ASTs are installed inside secondary containment with an impervious barrier beneath the ASTs meeting the requirements of 20.5.109.904 NMAC and the interstice between them can be remotely monitored;

B. the monitoring system between the AST and the secondary barrier shall meet all of the following requirements;

(1) for cathodically protected ASTs, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic

protection system;

(2) the groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(3) the site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions;

(4) the locations and ports of monitoring wells are clearly marked and secured to avoid unauthorized access and tampering;

C. owners and operators shall have a qualified tester annually test to ensure proper operation of sensors and electrical or mechanical devices, which includes but is not limited to testing alarm operability, communication with controller, and proper height and location of sensors installed. Testing shall be conducted in accordance with the equipment manufacturers' testing instructions or in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory.

D. Owners and operators shall ensure the requirements in 20.5.111.1100 NMAC are met prior to implementing this method.

E. Owners and operators shall maintain and provide the department reports relating to the requirements of this section in accordance with 20.5.111.1111 NMAC and 20.5.111.1112 NMAC. [20.5.111.1103 NMAC - N, 07/24/2018]

20.5.111.1104 AUTOMATIC TANK GAUGING REQUIREMENTS FOR ASTS:

A. Owners and operators shall use automatic tank gauging systems that are third party certified for the size and capacity of the AST. Only third-party certifications that have been reviewed

and approved by the national work group on leak detection evaluations (NWGLDE) for AST use, as evidenced by their posting on the NWGLDE website, nwgle.org, will be accepted.

B. Owners and operators of ASTs may use automatic tank gauging as a method of release detection, every 30 days, if the automatic tank gauging system:

(1) tests for the loss of product and can detect a two-tenth gallon per hour leak rate from any portion of the tank that routinely contains regulated substances; and

(2) can conduct inventory control or another test of equivalent performance in accordance with all of the following:

(a) inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the AST are recorded each operating day;

(b) the equipment used is capable of measuring the level of regulated substance over the full range of the AST's height to the nearest one-eighth of an inch;

(c) the regulated substance inputs are reconciled with delivery receipts by measurement of the AST inventory volume before and after delivery;

(d) deliveries are made through a drop tube that extends to within one foot of the AST bottom, unless the AST is bottom loaded;

(e) regulated substance dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six cubic inches for every five gallons of regulated substance withdrawn;

(f) the measurement of any water level in the bottom of the AST is made to the nearest one-eighth of an inch at least once a month; and

(g) practices described in the *American Petroleum Institute Publication*

RP1621, "Bulk Liquid Stock Control at Retail Outlets" may be used, where applicable, as guidance in meeting the requirements of this section.

C. Owners and operators shall ensure a test of the proper operation of the automatic tank gauging system is performed at least annually starting three years after the effective date of these regulations and, at a minimum, as applicable to the facility, cover the following components and criteria:

(1) automatic tank gauge and other controllers: test alarm; verify system programming and configuration; test battery backup;

(2) probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;

(3) vacuum and pressure pumps and gauges: ensure proper communication with sensors and controller; and

(4) Inspections and testing shall be conducted by a person who is certified as a technician by the manufacturer of the automatic tank gauging system and meets the requirements for qualified testers in 20.5.105 NMAC.

D. Owners and operator shall use one of the following to comply with Paragraph C of this section:

(1) *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(2) The manufacturer's testing or inspection instructions.

E. Owners and operators shall review the monitoring reports on a monthly basis and notify the department in accordance with 20.5.118 NMAC if there is a failed or inconclusive result.

F. Owners and operator shall produce a report for all inspections and testing required

in this section which includes the results of the inspection or test and it shall be maintained and submitted in accordance with 20.5.111.1111 NMAC and 20.5.111.1112 NMAC. [20.5.111.1104 NMAC - N, 07/24/2018]

20.5.111.1105 REQUIREMENTS FOR AST UNDERGROUND PRESSURIZED PIPING INSTALLED PRIOR TO JULY 24, 2018:

Owners and operators of above ground storage tank systems with underground pressurized piping installed prior to the effective date of these regulations must have implemented a method, or a combination of methods, of release detection for the piping. The monitoring method, or combination of methods, shall follow the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

A. Owners and operators of AST systems shall:

(1) use automatic line leak detectors (including mechanical or electronic detectors) that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping when a leak is detected at three gallons per hour at 10 pounds per square inch line pressure within one hour;

(2) perform an annual test of the operation of the leak detector which includes a simulated leak, is conducted in accordance with the manufacturer’s testing protocol, and confirms the automatic line leak detector detects a leak at three gallons per hour at 10 pounds per square inch line pressure within one hour; and

(3) use a method, or combination of methods, for monitoring the piping for releases that complies with one of the following:

(a) a precision line tightness test is conducted every 12 months that is capable of detecting a leak of one-

tenth gallons per hour at one and one-half times the operating pressure; or

(b) use interstitial monitoring that complies with all of the requirements in 20.5.111.1103 NMAC, 20.5.111.1106 NMAC, and all of the following:

(i) shall automatically shut off the submersible turbine pump for the AST if the sensors used for interstitial monitoring detect regulated substances or water within the interstice or in the containment sumps associated with the piping; and

(ii) all sensors shall be tested annually in accordance with Subsection C of 20.5.11.1104 NMAC;

B. Automatic line leak detectors and sensors required in this section that either fail a test or are found to be damaged shall be repaired or replaced, and a line tightness test shall be conducted in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of this section once the repairs or replacements have been completed;

C. Equipment and methods used to monitor the piping shall be appropriate for the type and length of piping.

D. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, “Recommended Practices for Installation of Underground Liquid Storage Systems”;*

(2) *Petroleum Equipment Institute RP200, “Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling”;*

(3) *American Petroleum Institute Publication RP 1615, “Installation of Underground Hazardous Substances or Petroleum Storage Systems”;*

(4) *American Petroleum Institute 570, “Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems”;* and

(5) *American Society of Mechanical Engineering Standard B31.3, “Process Piping”.*

E. Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.111.1111 NMAC and provide to the department reports for all leak detector testing, line tightness testing, and sensor testing in accordance with 20.5.111.1112 NMAC.

[20.5.111.1105 NMAC - N, 07/24/2018]

20.5.111.1106 REQUIREMENTS FOR AST UNDERGROUND PRESSURIZED PIPING INSTALLED OR MODIFIED ON, OR AFTER JULY 24, 2018:

Owners and operators of above ground storage tank systems with underground pressurized piping installed or modified on, or after the effective date of these regulations shall use interstitial monitoring as the method of release detection for the piping. The interstitial monitoring method shall follow the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

A. Owners and operators of AST systems shall:

(1) use automatic line leak detectors (including mechanical or electronic detectors) that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping when a leak is detected at three gallons per hour at 10 pounds per square inch line pressure within one hour;

(2) perform an annual test of the operation of the leak detector which includes a simulated leak, is conducted in accordance with the manufacturer’s testing protocol, and confirms the automatic line leak detector detects a leak at three gallons per hour at 10 pounds per square inch line pressure within one hour;

(3) use interstitial monitoring that complies with all of the requirements in

20.5.111.1103 NMAC and all of the following:

(a) Sensors shall be installed in all containment sumps associated with the piping, including under-dispenser containment, transition sumps, and submersible turbine pump containment sumps used to monitor the interstice;

(b) Sensors shall:
monitor the interstice;
monitor all containment sumps associated with the piping;

(iii) sound an alarm and automatically shut off the submersible turbine pump when a regulated substance or water is detected;

(iv) be positioned in the lowest point of the containment sump; and

(v) be tested annually in accordance with Subsection C of 20.5.111.1104 NMAC;

(c) Containment sumps used for interstitial monitoring shall be tested every three years starting three years after the effective date of these regulations. The testing of the containment sumps shall comply with one of the following:

(i) the testing procedures as described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(ii) the equipment manufacturer's published testing procedures.

B. Automatic line leak detectors and sensors required in this section that either fail a test or are found to be damaged shall be repaired or replaced, and a line tightness test shall be conducted in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.11.1105 NMAC once the repairs or replacements have

been completed;

C. Equipment and methods used to monitor the piping shall be appropriate for the type and length of piping.

D. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*;

(2) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling"*;

(3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems"*;

(4) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems"*; and

(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping"*.

E. Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.111.1111 NMAC and provide to the department reports for all release detector testing, line tightness testing, containment sump testing, and sensor testing in accordance with 20.5.111.1112 NMAC.

[20.5.111.1106 NMAC - N, 07/24/2018]

20.5.111.1107 REQUIREMENTS FOR AST UNDERGROUND SUCTION PIPING INSTALLED PRIOR TO JULY 24, 2018:

A. Owners and operators of above ground storage tank systems where piping conveys regulated substances under suction and was installed prior to the effective date of these regulations shall use one of the following methods.

These methods shall be designed to detect a release from any portion of

underground piping:

(1) An annual line tightness test shall be conducted and the tightness testing shall be capable of detecting a one-tenth gallon per hour leak at one and one-half times the operating pressure; or

(2) Interstitial monitoring shall be used in accordance with all of the requirements in 20.5.11.1103 NMAC and 20.5.11.1105 NMAC;

B. Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

(1) the below-grade piping operates at less than atmospheric pressure;

(2) the below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(3) only one check valve is included in each suction line;

(4) the check valve is located directly below and as close as practical to the suction pump; and

(5) compliance with Paragraphs (2) through (4) of Subsection B of this section is demonstrated.

C. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*;

(2) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling"*;

(3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems"*;

(4) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of*

Piping Systems"; and
(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping"*.

D. Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.111.1111 NMAC and provide to the department reports for all release detector testing, line tightness testing, and sensor testing in accordance with 20.5.111.1112 NMAC. [20.5.111.1107 NMAC - N, 07/24/2018]

20.5.111.1108 REQUIREMENTS FOR AST UNDERGROUND SUCTION PIPING INSTALLED ON OR AFTER JULY 24, 2018:

A. Owners and operators of above ground storage tank systems where piping conveys regulated substances under suction and was installed after the effective date of these regulations shall meet the requirements for interstitial monitoring in 20.5.111.1103 NMAC and the following:

(1) Sensors shall be installed in all containment sumps associated with the piping, including under-dispenser containment, transition sumps, and secondary containment sumps used to monitor the interstice.

(2) Sensors shall:

- (a)** monitor the interstice;
- (b)** monitor all containment sumps associated with the piping;
- (c)** sound an alarm and automatically shut off the pump when a regulated substance or water is detected;
- (d)** be positioned in the lowest point of the containment sump; and
- (e)** be tested annually in accordance with Subsection C of 20.5.111.1104 NMAC.

(3) Containment sumps used for interstitial monitoring shall be tested every three years beginning three

years after the effective date of the regulations. The testing of the containment sumps shall comply with one of the following:

(a) the testing procedures as described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(b) the equipment manufacturer's published testing procedures.

B. Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

(1) the below-grade piping operates at less than atmospheric pressure;

(2) the below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(3) only one check valve is included in each suction line;

(4) the check valve is located directly below and as close as practical to the suction pump; and

(5) compliance with Paragraphs (2) through (4) of Subsection B of this section is demonstrated.

C. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP 100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*;

(2) *Petroleum Equipment Institute RP 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling"*;

(3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems"*;

(4) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems"*; and

(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping"*.

D. Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.11.1111 NMAC and provide to the department reports for all release detector testing, line tightness testing, and sensor testing in accordance with 20.5.11.1112 NMAC. [20.5.111.1108 NMAC - N, 07/24/2018]

20.5.111.1109 REQUIREMENTS FOR AST ABOVE GROUND PIPING:

A. Owners and operators of above ground storage tanks with above ground piping that conveys regulated substances either by suction or pressure shall monitor for releases every 30 days and may use visual inspection if all portions of the piping are completely visible, readily accessible, and not in contact with the ground or soil. Owners and operators shall keep a log of visual inspection of piping that meets the requirements of 20.5.111.1102 NMAC.

B. Owners and operators of above ground storage tank systems with above ground piping that conveys a regulated substance under pressure shall not be required to install automatic line leak detectors as long as the entire piping run is above ground and a solenoid valve has been installed on the piping at the submersible turbine pump. Also, a manually activated control shall be installed that will permit the submersible turbine pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and shall stop the submersible turbine pump when the dispensing nozzle is returned to the bracket.

C. For piping that does not meet these requirements, owners and operators shall use a method, or

combination of methods, that meet the requirements in 20.5.111.1105 NMAC through 20.5.111.1108 NMAC depending on the piping type and when the piping was installed or modified.

D. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP 100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *Petroleum Equipment Institute RP 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling";*

(3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(4) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";*

(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping";*

(6) *National Fire Protection Association Standard NFPA 110, "Standard for Emergency and Standby Power Systems";* and

(7) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".* [20.5.111.1109 NMAC - N, 07/24/2018]

20.5.111.1110 ALTERNATE METHODS:

A. If owners and operators want to install materials or methods of release detection equipment for tanks or piping required in 20.5.111 NMAC that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent

testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

(1) date the form is completed;

(2) facility name, facility ID number, address (with county) and telephone number;

(3) owner name, owner ID number, address and telephone number;

(4) citation to regulation for which alternate method or material (such as type of piping) is requested;

(5) brief description of the proposed alternate method or material;

(6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and

(7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

B. Another type of release detection method, or combination of methods, may be used if approved pursuant to this section, and if, for ASTs, it can detect a two-tenth gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

C. The department may approve another method if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.111 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of

public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment as the methods provided in this section.

[20.5.111.1110 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to request approval of an alternate method. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.111.1111

RELEASE DETECTION

RECORDKEEPING:

A. All storage tank system owners and operators shall maintain records in accordance with 20.5.110 NMAC demonstrating compliance with all applicable requirements of 20.5.111 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to maintain the records required by this section; however, both parties are liable in the event of noncompliance.

B. Records to be maintained shall include, but not be limited to:

(1) all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer;

(2) the results of any sampling, testing, or monitoring;

(3) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site and any schedules of calibration and maintenance required by the release detection equipment manufacturer;

(4) the results of annual operational tests of release

detection equipment. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria for the specified equipment or needs to have action taken, and describe any action taken to correct an issue.
[20.5.111.1111 NMAC - N, 07/24/2018]

20.5.111.1112 REPORTING:

A. Owners and operators shall provide to the department all reports as required in 20.5.111 NMAC within 60 days of completion of the tests.

B. Owners and operators shall report any test or inspection results that are anything other than a “pass” or “normal” result to the department within 24 hours of completion of the test or inspection in accordance with 20.5.118.1801 NMAC.

C. Owners and operators shall ensure all reports required in 20.5.111 NMAC contain, at a minimum, the following:

- (1) facility name and address;
- (2) facility ID number;
- (3) owner and operator name and address;
- (4) owner ID number;
- (5) date report was completed;
- (6) date of the test;
- (7) duration of the test;
- (8) brand name and model number of equipment being tested or sufficient description to allow identification of the equipment;
- (9) type of equipment being tested;
- (10) type of test, including test procedures and methods;
- (11) results of the test;
- (12) name of the person who performed the inspection or test and their qualifications as specified in 20.5.105 NMAC;
- (13) brand name and model number of the testing

equipment used during the test and the date the testing equipment was last calibrated;

(14) for inspections and testing of automatic tank gauge systems as required in 20.5.111.1104 NMAC, a completed copy of the automatic tank gauge operation inspection form in *Petroleum Equipment Institute Publication RP 1200, “Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities”*;

(15) for testing of automatic line leak detectors:

- (a) serial number of the leak detector;
- (b) description of storage tank system;
- (c) detected leak rate in gallons per hour;
- (d) line pressure and functional element holding pressure in pounds per square inch;
- (e) type, diameter and length of piping; and
- (f) test results, including the following:
 - (i) whether flow is restricted by a mechanical line leak detector when a leak is detected;
 - (ii) whether the turbine shuts down, an alarm is triggered, or both, when a simulated leak is induced during the testing of an electronic line leak detector;
- (16) for testing of sensors used for monitoring secondary containment and interstitial spaces:
 - (a) the information in the liquid sensor functionality testing form in the *Petroleum Equipment Institute Publication RP 1200, “Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities”*; and
 - (b)

information on whether each individual sensor used for interstitial monitoring meets automatic shutdown requirements in 20.5.111 NMAC; and

- (17) for line tightness testing:
 - (a) leak rate;
 - (b) testing pressure;
 - (c) bleed back;
 - (d) piping type;
 - (e) piping diameter; and
 - (f) length of piping.

D. Owners and operators may use forms and checklist developed by the department, when available, to meet the reporting requirements in 20.5.111 NMAC.

[20.5.111.1112 NMAC - N, 07/24/2018]

[Provide reports as required in Subsection A of this section as directed at the petroleum storage tank bureau’s pages on the department website. The forms or checklists referred to in Subsection E of this section, if available, may be found either on the department’s website or by calling the Petroleum Storage Tank Bureau at 505-476-4397.]

HISTORY OF 20.5.111 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

- EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 9/12/88.
- EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 2/14/89.
- EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 8/4/89.
- EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 6/12/90.
- EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection, 6/26/90.

History of Repealed Material:

20 NMAC 5.6, Underground Storage Tanks - Release Detection (filed 2/27/97) repealed 8/15/03.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 7/16/03) repealed 4/4/08.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 4/4/08) repealed 7/24/18.

Other History:

EIB/USTR-6, Underground Storage Tank Regulations - Part VI - Release Detection (filed 6/26/90) renumbered, reformatted and replaced by 20 NMAC 5.6, Underground Storage Tanks - Release Detection, effective 11/5/95;

20 NMAC 5.6, Underground Storage Tanks - Release Detection (filed 10/6/95) replaced by 20 NMAC 5.6, Underground Storage Tanks - Release Detection, effective 4/1/97;

20 NMAC 5.6, Underground Storage Tanks - Release Detection (filed 2/27/97) was renumbered, reformatted and replaced by 20.5.6 NMAC, Petroleum Storage Tanks - Release Detection, effective 8/15/03.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 7/16/03) replaced by 20.5.6 NMAC, Petroleum Storage Tanks - Release Detection, effective 4/4/08.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 4/4/08) replaced by 20.5.111 NMAC, Petroleum Storage Tanks - Release Detection for Above Ground Storage Tank Systems, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

TITLE 20**ENVIRONMENTAL
PROTECTION****CHAPTER 5 PETROLEUM
STORAGE TANKS****PART 112 ABOVE GROUND
STORAGE TANK EMERGENCY
GENERATOR SYSTEMS****20.5.112.1 ISSUING**

AGENCY: New Mexico Environmental Improvement Board. [20.5.112.1 NMAC - N, 07/24/2018]

20.5.112.2 SCOPE: This part applies to owners and operators of above ground storage tank emergency generator systems as provided in 20.5.101 NMAC. If the owner and operator of an above ground storage tank emergency generator system are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance. [20.5.112.2 NMAC - N, 07/24/2018]

20.5.112.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978. [20.5.112.3 NMAC - N, 07/24/2018]

20.5.112.4 DURATION: Permanent. [20.5.112.4 NMAC - N, 07/24/2018]

20.5.112.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section. [20.5.112.5 NMAC - N, 07/24/2018]

20.5.112.6 OBJECTIVE: The purpose of 20.5.112 NMAC is to ensure that above ground storage tank emergency generator systems are designed, constructed, installed, modified, repaired, operated, and maintained to minimize releases, to ensure that releases from storage tanks are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state. [20.5.112.6 NMAC - N, 07/24/2018]

20.5.112.7 DEFINITIONS: The definitions in 20.5.101 NMAC

apply to this part. [20.5.12.7 NMAC – N, 07/24/2018]

**20.5.112.8 to 20.5.112.1199
[RESERVED]**

20.5.112.1200 GENERAL REQUIREMENTS: Owners and operators of above ground storage tank emergency generator systems shall meet the requirements in this part in addition to all of the applicable requirements in the rest of 20.5 NMAC.

[20.5.112.1200 NMAC - N, 07/24/2018]

20.5.112.1201 DEADLINES FOR CLOSING OR UPGRADING ABOVE GROUND STORAGE TANK EMERGENCY

GENERATOR SYSTEMS: Not later than July 1, 2013 owners and operators of AST emergency generator systems must have:

A. upgraded AST emergency generator systems to meet all performance standards for AST systems in 20.5.109 NMAC, with the exception that existing systems need not submit project drawings; or

B. permanently closed any AST emergency generator system that does not meet the performance standards in 20.5.109 NMAC in accordance with 20.5.115.1502 NMAC.

[20.5.112.1201 NMAC - N, 07/24/2018]

20.5.112.1202 DESIGN, CONSTRUCTION, AND INSTALLATION OF NEW AND UPGRADED ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS: Owners and operators of above ground storage tank emergency generator systems shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.109 NMAC.

A. Owners and operators of ASTs used for emergency power generation where the loss of electrical power will not result in the loss of human life or serious injury may install motor fuel dispensers

only if the dispensers are connected to the AST by a separate pump and piping system other than that which supplies a regulated substance to the emergency generator.

B. Owners and operator who install a normally closed solenoid valve in accordance with Subsection D of 20.5.109.902 NMAC on the supply piping so that a leak will not drain the system by siphon shall meet one of the following:

(1) solenoid valve shall operate from battery voltage and have manual (nonelectric) operation; or

(2) install a manual bypass valve.

C. Owners and operators of above ground storage tank emergency generator systems shall use national codes and standards in 20.5.109 NMAC. Owners and operators shall also use or more of the following to comply with the requirements of this part:

(1) *National Fire Protection Association Standard 110, "Standard for Emergency and Standby Power Systems"*; and

(2) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems"*. [20.5.112.1202 NMAC - N, 07/24/2018]

20.5.112.1203 DESIGN, CONSTRUCTION, AND INSTALLATION OF NEW AND UPGRADED ABOVE GROUND SUB-BASE TANK EMERGENCY GENERATOR SYSTEMS: Owners and operators of above ground storage tanks that are installed underneath emergency generators, and are also known as belly tanks or sub-base generator tanks, shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.109 NMAC.

A. Owners and operators shall be required to meet the certified installer requirements in 20.5.105 NMAC for new sub-base

ASTs.

B. Owners and operators shall not be required to meet installation requirements for above ground piping for any above ground piping that connects the sub-base AST to the emergency generator.

C. Owners and operators of sub-base AST systems shall comply with release detection requirements for tanks and piping in 20.5.111 NMAC no later than three years after the effective date of these regulations.

[20.5.112.1203 NMAC - N, 07/24/2018]

20.5.112.1204 OPERATION AND MAINTENANCE REQUIREMENTS FOR ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS:

Owners and operators of above ground storage tank emergency generator systems shall meet all of the requirements for operation and maintenance in 20.5.110 NMAC in addition to all of the applicable requirements in the rest of 20.5 NMAC.

[20.5.112.1204 NMAC - N, 07/24/2018]

20.5.112.1205 RELEASE DETECTION REQUIREMENTS FOR ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS INSTALLED PRIOR TO JULY 24, 2018:

Owners and operators of AST emergency generator systems installed prior to the effective date of these regulations shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.111 NMAC.

A. Owners and operators of AST emergency generator systems shall implement a method, or combination of methods, no later than three years after the effective date of these regulations that monitors above ground storage tanks every 30 days for releases.

B. Owners and operators of AST emergency generator systems shall provide a method, or combination of methods,

of release detection for underground piping no later than three years after the effective date of these regulations. The method, or combination of methods, shall follow the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall comply with the requirements for release detection for underground piping as follows:

(1) Owners and operators of AST emergency generator systems with piping that conveys a regulated substance under pressure shall use automatic line leak detectors for emergency generators that alert the operator to the presence of a leak by activating a visual and audible alarm when a leak is detected and that comply with the requirements of 20.5.111.1105 NMAC, except:

(a) Automatic line leak detectors for emergency generators shall not be required to restrict or shut off the flow of regulated substances.

(b) Sensors used for interstitial monitoring shall not be required to automatically shut off the submersible turbine pump when a leak is detected in the interstice of the piping or in containment sumps. Sensors used for interstitial monitoring shall activate an external audible and visual alarm when liquid is detected.

(2) Owners and operators of ASTs with piping that conveys a regulated substance by suction shall comply with the requirements in 20.5.111.1107 NMAC, except the sensors used for interstitial monitoring shall not be required to restrict or shut off the flow of regulated substances. Sensors used for interstitial monitoring shall activate an audible and visual external alarm when a liquid is detected.

C. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for*

Installation of Underground Liquid Storage Systems”;

(2)

Petroleum Equipment Institute RP200, “Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling”;

(3) *American*

Petroleum Institute Publication RP 1615, “Installation of Underground Hazardous Substances or Petroleum Storage Systems”;

(4)

American Petroleum Institute 570, “Pipe Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems”;

(5) *American*

Society of Mechanical Engineering Standard B31.3, “Process Piping”;

(6) *National*

Fire Protection Association Standard NFPA 110, “Standard for Emergency and Standby Power Systems”; and

(7) *Petroleum*

Equipment Institute Publication RP1400, “Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems”. [20.5.112.1205 NMAC - N, 07/24/2018]

20.5.112.1206 RELEASE DETECTION REQUIREMENTS FOR ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS INSTALLED OR MODIFIED ON, OR AFTER, JULY 24,

2018: Owners and operators of AST emergency generator systems installed on, or after, the effective date of these regulations shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.111 NMAC upon installation.

A. Owners and operators of AST emergency generator systems installed or modified on or after the effective date of these regulations must implement a method, or combination of methods, that monitors above ground storage tanks every 30 days for releases using an applicable method in 20.5.111 NMAC.

B. Owners and operators of AST emergency generator systems where the piping is installed or replaced on, or after, the effective date of these regulations, and the piping conveys a regulated substance under pressure shall use interstitial monitoring and automatic line leak detectors that alert the operator to the presence of a leak by activating an external audible and visual alarm when liquid is detected. Owners and operators of AST emergency generator systems shall comply with the requirements of 20.5.111.1106 NMAC, except:

(1)

automatic line leak detectors for AST emergency generator systems shall not be required to shut off the flow of regulated substances; and

(2)

sensors used to meet the interstitial monitoring requirements for AST emergency generator systems shall not be required to automatically shut off the flow of product when liquid is detected in the interstice of the piping or in containment sumps. Sensors used for interstitial monitoring shall activate a secondary audible or visual alarm when liquid is detected.

C. Owners and operators of ASTs where the piping is installed or replaced on, or after, the effective date of these regulations and the piping conveys a regulated substance by suction shall comply with the requirements in 20.5.111.1108 NMAC, except the sensors used for interstitial monitoring shall activate an external audible and visual alarm when a leak is detected either in the interstice of the piping or in containment sumps. Sensors used to meet the interstitial monitoring requirements for AST emergency generator systems shall not be required to automatically shut off the flow of product when liquid is detected in the interstice of the piping or in containment sumps.

D. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum*

Equipment Institute publication

RP100, “Recommended Practices for Installation of Underground Liquid Storage Systems”;

(2)

Petroleum Equipment Institute RP200, “Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling”;

(3) *American*

Petroleum Institute publication RP 1615, “Installation of Underground Petroleum Storage Systems”;

(4)

American Petroleum Institute 570, “Pipe Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems”;

(5) *American*

Society of Mechanical Engineering Standard B31.3, “Process Piping”.

(6) *National*

Fire Protection Association Standard NFPA 110, “Standard for Emergency and Standby Power Systems”; and

(7) *Petroleum*

Equipment Institute Publication RP1400, “Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems”. [20.5.112.1206 NMAC - N, 07/24/2018]

20.5.112.1207 CERTIFIED INSTALLERS: Owners and operators of above ground storage tank emergency generator systems shall meet the requirements for certified installers in 20.5.105 NMAC in addition to all of the applicable requirements in the rest of 20.5 NMAC.

[20.5.112.1207 NMAC - N, 07/24/2018]

20.5.112.1208 ALTERNATE METHODS:

A. If owners and operators want to install AST emergency generator systems to meet the requirements in this part or want to install release detection equipment for tanks or piping installed prior to the effective date of these regulations with materials and methods that are not in accordance with the current edition of an industry standard or code

of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

B. Another type of release detection method, or combination of methods, may be used if approved pursuant to this section for tanks and piping installed prior to the effective date of these regulations, and if, for ASTs, it can detect a 0.2 gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

C. The department may approve another release detection method for tanks and piping installed prior to the effective date of these regulations if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.111 NMAC. In comparing methods, the department shall consider the size of release

that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide protection of public health, safety and welfare and the environment equivalent to the protection provided by the methods in this part.

[20.5.112.1208 NMAC - N, 07/24/2018]

20.5.112.1209 RECORD

KEEPING: Owners and operators of AST emergency generator systems shall meet the requirements for recordkeeping in this part in addition to all of the applicable requirements in 20.5.110 NMAC and 20.5.111 NMAC.

[20.5.112.1209 NMAC - N, 07/24/2018]

20.5.112.1210 REPORTING:

Owners and operators of AST emergency generator systems shall meet the requirements for reporting in this part in addition to all of the applicable requirements in 20.5.110 NMAC and 20.5.111 NMAC.

[20.5.112.1210 NMAC - N, 07/24/2018]

History of 20.5.112 NMAC:
[RESERVED]

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 113 UNDERGROUND
STORAGE TANK EMERGENCY
GENERATOR SYSTEMS**

20.5.113.1 ISSUING

AGENCY: New Mexico Environmental Improvement Board.
[20.5.113.1 NMAC - N, 07/24/2018]

20.5.113.2 SCOPE:

This part applies to owners and operators of underground storage tank emergency generator systems as provided in 20.5.101 NMAC.

If the owner and operator of an underground storage tank emergency generator system are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.113.2 NMAC - N, 07/24/2018]

20.5.113.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.113.3 NMAC - N, 07/24/2018]

20.5.113.4 DURATION:

Permanent.

[20.5.113.4 NMAC - N, 07/24/2018]

20.5.113.5 EFFECTIVE

DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.113.5 NMAC - N, 07/24/2018]

20.5.113.6 OBJECTIVE:

The purpose of 20.5.113 NMAC is to ensure that underground storage tank emergency generator systems are designed, constructed, installed, modified, repaired, operated, and maintained to minimize releases, to ensure that releases from storage tanks are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.113.6 NMAC - N, 07/24/2018]

20.5.113.7 DEFINITIONS:
The definitions in 20.5.101 NMAC apply to this part.
[20.5.113.7 NMAC - N, 07/24/2018]

20.5.113.8 to 20.5.113.1299
[RESERVED]

20.5.113.1300 GENERAL REQUIREMENTS: Owners and operators of underground storage tank emergency generator systems shall meet the requirements in this part in addition to all of the applicable requirements in the rest of 20.5 NMAC.
[20.5.113.1300 NMAC - N, 07/24/2018]

20.5.113.1301 DEADLINES FOR CLOSING OR UPGRADING EXISTING UST EMERGENCY GENERATOR SYSTEMS: Not later than July 1, 2013, owners and operators of UST emergency generator systems installed prior to April 4, 2008, must have:

A. upgraded UST emergency generator systems to meet all performance standards for UST systems in this part and 20.5.106 NMAC; or

B. permanently closed any UST emergency generator system that does not meet the performance standards in this part and 20.5.106 NMAC in accordance with 20.5.115.1502 NMAC.
[20.5.113.1301 NMAC - N, 07/24/2018]

20.5.113.1302 DESIGN, CONSTRUCTION, AND INSTALLATION OF NEW AND UPGRADED UNDERGROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS: Owners and operators of underground storage tank emergency generator systems shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.106 NMAC.

A. Owners and operators of USTs used for emergency power generation where the loss of electrical power will not result in the loss of human life or serious injury

may install motor fuel dispensers only if the dispensers are connected to the UST by a separate pump and piping system other than that which supplies a regulated substance to the emergency generator;

B. Owners and operators who install a normally closed solenoid valve on the supply piping so that a leak will not drain the system by siphon shall meet one of the following:

(1) the solenoid valve shall operate from battery voltage and have manual (nonelectric) operation; or

(2) owners and operators shall install a manual bypass valve.

C. Owners and operators of underground storage tank emergency generator systems shall use national codes and standards as required in 20.5.106 NMAC. Owners and operators shall also use one or more of the following to comply with the requirements of this part:

(1) *National Fire Protection Association Standard 110, "Standard for Emergency and Standby Power Systems";* and

(2) *Petroleum Equipment Institute publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*

D. Owners and operators of UST emergency generator systems installed prior to April 4, 2008 must have either met the requirements for new UST systems in 20.5.106.606 NMAC or have upgraded the UST systems in accordance with the requirements in 20.5.106.607 NMAC.

E. Owners and operators of UST emergency generator systems installed on or after April 4, 2008 shall meet the secondary containment requirements in 20.5.106.606 NMAC at installation.

F. Owners and operators shall use one or more of the following to meet the requirements for this section:

(1) *Petroleum Equipment Institute Publication*

RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(3) *American Petroleum Institute 570, "Pipe Inspection Code: In-Service Inspection, Rating, Repair, and Alteration of Piping Systems";*

(4) *American Society of Mechanical Engineers Standard B31.3, "Process Piping";*

(5) *National Fire Protection Association Standard 110, "Standard for Emergency and Standby Power Systems";* and

(6) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*

[20.5.113.1302 NMAC - N, 07/24/2018]

20.5.113.1303 RELEASE DETECTION REQUIREMENTS FOR UST EMERGENCY GENERATOR SYSTEMS INSTALLED PRIOR TO JULY 24, 2018:

Owners and operators of UST emergency generator systems installed prior to the effective date of these regulations shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.108 NMAC.

A. Owners and operators of UST emergency generator systems shall implement a method, or combination of methods, no later than three years after the effective date of these regulations that monitors underground storage tanks every 30 days for releases.

B. Owners and operators of UST emergency generator systems shall provide a method, or combination of methods, of release detection for underground piping no later than three years after the effective date of these regulations. The method, or combination of

methods, shall follow the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall comply with the requirements for release detection for underground piping as follows:

(1) Owners and operators of UST emergency generator systems with piping that conveys a regulated substance under pressure shall use automatic line leak detectors for emergency generators that alert the operator to the presence of a leak by activating a visual and audible alarm when a leak is detected and that meet the requirements of 20.5.108.810 NMAC, except:

(a) Automatic line leak detectors for emergency generators shall not be required to restrict or shut off the flow of regulated substances.

(b) Sensors used to meet the interstitial monitoring requirements shall not be required to automatically shut off the submersible turbine pump when a liquid is detected in the interstice of the piping or in containment sumps. Sensors used for interstitial monitoring shall activate an external audible and visual alarm when liquid is detected.

(2) Owners and operators of UST emergency generator systems with piping that conveys a regulated substance by suction shall comply with the requirements in 20.5.108.812 NMAC, except sensors used for interstitial monitoring shall not be required to restrict or shut off the flow of regulated substances. Sensors used for interstitial monitoring shall activate an audible and visual external alarm when liquid is detected.

C. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(3) *American Petroleum Institute 570, "Pipe Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";*

(4) *American Society of Mechanical Engineers Standard B31.3, "Process Piping";*

(5) *National Fire Protection Association Standard 110, "Standard for Emergency and Standby Power Systems";* and

(6) *Petroleum Equipment Institute publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".* [20.5.113.1303 NMAC - N, 07/24/2018]

20.5.113.1304 RELEASE DETECTION REQUIREMENTS FOR UST EMERGENCY GENERATOR SYSTEMS INSTALLED OR MODIFIED ON, OR AFTER JULY 24, 2018: Owners and operators of UST emergency generator systems installed on or after the effective date of these regulations shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.106 NMAC upon installation.

A. Owners and operators of UST emergency generator systems installed or modified on or after the effective date of these regulations shall use interstitial monitoring in accordance with 20.5.108.810 NMAC to meet the requirements for monthly monitoring.

B. Owners and operators of UST emergency generator systems where the piping is installed or replaced on or after the effective date of these regulations, and the piping conveys a regulated substance under pressure shall use interstitial monitoring and automatic line leak detectors that alert the operator to the presence of a leak by

activating an external audible and visual alarm when liquid is detected. Owners and operators of UST emergency generator systems shall meet the requirements of 20.5.108.811 NMAC, except:

(1) Automatic line leak detectors for UST emergency generator systems shall not be required to restrict or shut off the flow of regulated substances; and

(2) Sensors used to meet the interstitial monitoring requirements for UST emergency generator systems shall not be required to automatically shut off the flow of product when liquid is detected in the interstice of the piping or in containment sumps. Sensors used for interstitial monitoring shall activate a secondary audible and visual alarm when liquid is detected.

C. Owners and operators of UST emergency generator systems where the piping is installed or replaced on or after the effective date of these regulations and the piping conveys a regulated substance by suction shall comply with the requirements in 20.5.108.813 NMAC, except that the sensors used for interstitial monitoring shall activate an external audible and visual alarm when liquid is detected either in the interstice of the piping or in containment sumps. Sensors used to meet the interstitial monitoring requirements for UST emergency generator systems shall not be required to automatically shut off the flow of product when liquid is detected in the interstice of the piping or in containment sumps.

D. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(3)

American Petroleum Institute 570, "Pipe Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";

(4) *American Society of Mechanical Engineers Standard B31.3, "Process Piping";*

(5) *National Fire Protection Association Standard 110, "Standard for Emergency and Standby Power Systems";* and

(6) *Petroleum Equipment Institute publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*
[20.5.113.1304 NMAC - N, 07/24/2018]

20.5.113.1305 CERTIFIED INSTALLERS: Owners and operators of underground storage tank emergency generator systems shall meet the requirements for certified installers in 20.5.105 NMAC in addition to all of the applicable requirements in the rest of 20.5 NMAC.
[20.5.113.1305 NMAC - N, 07/24/2018]

20.5.113.1306 ALTERNATE METHODS:
A. If owners and operators want to install UST emergency generator systems to meet requirements in this part or want to install release detection equipment for tanks or piping installed prior to the effective date of these regulations with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

(1) date the form is completed;

(2) facility name, facility ID number, address (with county) and telephone number;

(3) owner name, owner ID number, address and telephone number;

(4) citation to regulation for which alternate method or material (such as type of piping) is requested;

(5) brief description of the proposed alternate method or material;

(6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and

(7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

B. Another type of release detection method, or combination of methods, may be used if approved pursuant to this section for tanks or piping installed prior to the effective date of the regulations, and if, for USTs, the method can detect a two-tenth gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

C. The department may approve another release detection method for tanks or piping installed prior to the effective date of the regulations if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.108 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide protection of

public health, safety and welfare and the environment equivalent to the protection provided by the methods in this part.
[20.5.113.1306 NMAC - N, 07/24/2018]

20.5.113.1307 RECORD KEEPING: Owners and operators of underground storage tank emergency generator systems shall meet the requirements for recordkeeping in this part in addition to all of the applicable requirements in 20.5.107 NMAC and 20.5.108 NMAC.
[20.5.113.1307 NMAC - N, 07/24/2018]

20.5.113.1308 REPORTING: Owners and operators of underground storage tank emergency generator systems shall meet the requirements for reporting in this part in addition to all of the applicable requirements in 20.5.107.715 NMAC and 20.5.108.816 NMAC.
[20.5.113.1308 NMAC - N, 07/24/2018]

History of 20.5.113 NMAC:
[RESERVED]

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 114 AIRPORT
HYDRANT FUEL
DISTRIBUTION SYSTEMS, UST
SYSTEMS WITH FIELD-
CONSTRUCTED TANKS,
AND HYBRID STORAGE TANK
SYSTEMS**

20.5.114.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[20.5.114.1 NMAC - N, 07/24/2018]

20.5.114.2 SCOPE: This part applies to owners and operators

of airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems as provided in 20.5.101 NMAC. If the owner and operator of an airport hydrant fuel distribution system, UST system with field-constructed tanks, or hybrid storage tank system are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.
[20.5.114.2 NMAC - N, 07/24/2018]

20.5.114.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.
[20.5.114.3 NMAC - N, 07/24/2018]

20.5.114.4 DURATION: Permanent.
[20.5.114.4 NMAC - N, 07/24/2018]

20.5.114.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.114.5 NMAC - N, 07/24/2018]

20.5.114.6 OBJECTIVE: The purpose of 20.5.114 NMAC is to ensure that airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems are installed, modified, repaired, operated, and maintained to minimize releases from storage tank systems, to ensure that releases are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.
[20.5.114.6 NMAC - N, 07/24/2018]

20.5.114.7 DEFINITIONS: The definitions in 20.5.101 NMAC apply to this part.
[20.5.114.7 NMAC - N, 07/24/2018]

20.5.114.8 to 20.5.114.1399 [RESERVED]

20.5.114.1400 GENERAL REQUIREMENTS FOR AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS:

A. Owners and operators of airport hydrant fuel distribution systems, field-constructed tanks, and hybrid storage tank systems shall comply with the requirements of 20.5.114 NMAC in addition to all the applicable requirements in the rest of 20.5 NMAC.

B. Owners and operators of USTs that are part of an airport hydrant fuel distribution system shall comply with the registration requirements in 20.5.102 NMAC no later than three years after the effective date of the regulations.

C. Owners and operators of USTs with field-constructed tanks shall comply with the registration requirements in 20.5.102 NMAC no later than three years after the effective date of the regulations.

D. Owners and operators of ASTs and USTs that are part of hybrid storage tank systems shall comply with the registration requirements in 20.5.102 NMAC no later than three years after the effective date of the regulations.

E. Owners and operators of airport hydrant fuel distribution systems, field-constructed tanks, and hybrid storage tank systems shall comply with the following requirements on the effective date of the regulations:

(1) release reporting requirements in 20.5.118 NMAC;

(2) corrective action requirements in 20.5.119 through 20.5.123 NMAC;

(3) closure requirements in 20.5.115 NMAC;

(4) financial responsibility requirements in 20.5.117 NMAC; and

(5) lender liability requirements in 20.5.124 NMAC.

F. Owners and operators of airport hydrant fuel distribution systems, field-constructed tanks, and hybrid storage tank systems shall have new storage tank systems and upgrades to existing storage tank systems designed and the construction overseen by a professional engineer with training and experience in these types of storage tank systems. The professional engineer shall prepare, sign, and stamp as-built drawings, and the owner and operator shall maintain records documenting compliance with this requirement in accordance with 20.5.107 NMAC and 20.5.110 NMAC.

(1) Owners and operators shall submit a set of plans to the department at least 60 days in advance of the start of construction.

(2) Owners and operators who install new or upgrade existing airport hydrant fuel distribution systems, field-constructed tanks, and hybrid storage tank systems shall hire a contractor who employs a person with at least two years of experience in the installation of these types of systems.

(3) Owners and operators may use the *Unified Facilities Criteria (UFC) 3-460-01, "Design: Petroleum Fuel Facilities"* when designing, constructing and installing these types of systems.

G. Owners and operators of hybrid storage tank systems shall do one of the following:

(1) submit to the department no later than one year after the effective date of these regulations:

(a) an approval from the New Mexico state fire marshal's office for the hybrid storage tank system;

(b) an approval from the New Mexico state fire marshal's office for an AST at a retail fueling facility that exceeds the size limit on ASTs for these facilities, as set forth in the international fire code; and

(c) documentation that the UST can withstand the head pressure from the AST anytime a transfer of regulated substance is made. The documentation must include an evaluation by a New Mexico professional engineer who has education and experience in petroleum storage tank systems; or

(2) disconnect the piping feeding the UST system from the AST and permanently close the AST system in accordance with the requirements in 20.5.114.1410 NMAC and 20.5.115 NMAC. [20.5.114.1400 NMAC - N, 07/24/2018]

20.5.114.1401 UPGRADE REQUIREMENTS FOR EXISTING AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK

SYSTEMS: No later than three years after the effective date of the regulations, all airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems installed prior to the effective date of these regulations shall comply with the following requirements:

A. Above ground storage tank systems. Tanks greater than 10 years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the department to adequately assess the tank for structural soundness and corrosion holes. AST systems or system components found to be structurally unsound or to have corrosion holes or damage shall be replaced in accordance with the requirements for a new AST system in 20.5.109 NMAC or permanently closed in accordance with 20.5.115 NMAC. AST systems shall be protected from corrosion in accordance with 20.5.109 NMAC and 20.5.110 NMAC and shall

comply with spill and overflow prevention equipment requirements in accordance with 20.5.109 NMAC and 20.5.110 NMAC.

B. Underground storage tank systems. UST system components in contact with an electrolyte and that routinely contain regulated substances shall meet one of the following:

(1) be constructed of a non-corrodible material or steel clad with a non-corrodible material that meets the performance standards in 20.5.106.603 NMAC and 20.5.106.609 NMAC; or

(2) be constructed of metal and cathodically protected in accordance with the requirements in 20.5.106 NMAC, 20.5.107 NMAC, and in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and meet the following:

(a) Tanks greater than 10 years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the department to adequately assess the tank for structural soundness and corrosion holes.

(b) Existing steel tanks shall comply with the upgrade requirements in 20.5.106.607 NMAC.

C. Piping.

(1) Metal piping on an airport hydrant system or field-constructed UST system that is in contact with an electrolyte must be cathodically protected in accordance with requirements of 20.5.106 NMAC, 20.5.107 NMAC, and in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory.

(2) Metal underground piping or piping in contact with an electrolyte on a hybrid storage tank system shall be either

secondarily contained or replaced with double walled non-corrodible piping with containment sumps at both ends.

D. Spill and overflow prevention equipment. Owners and operators shall comply with the spill and overflow prevention requirements as follows:

(1) AST systems with capacities of less than 55,000 gallons and greater than 1320 gallons and associated with airport hydrant systems or USTs with field-constructed tanks shall meet the requirements for spill and overflow prevention equipment in 20.5.109.910 NMAC;

(2) UST systems associated with airport hydrant systems or USTs with field-constructed tanks shall meet the requirements for spill and overflow prevention equipment in 20.5.106.613 NMAC.

E. Hybrid storage tank systems.

(1) Any UST receiving deliveries of regulated substance by a remote fill pipe connected to an above ground storage tank shall be equipped with a containment sump at the connection to the UST.

(2) Any remote fill piping shall be constructed of double walled piping and be interstitially monitored in accordance with 20.5.108.811 NMAC or 20.5.108.813 NMAC as applicable.

(3) Remote fill piping shall be equipped with a transition sump where the piping enters the ground from the AST.

(4) Any UST receiving deliveries of regulated substance by a remote fill pipe connected to an AST shall be equipped with redundant overflow prevention and pressure regulating devices to include the following:

(a) an overflow prevention device that shall activate an audible and visual alarm at eighty-five percent of the UST capacity;

(b) an overflow prevention device that shall

automatically restrict fuel delivery without increasing pressure on the UST at ninety percent of the UST capacity;

(c)

an overfill prevention device that shall automatically shut off the delivery at ninety-five percent of the UST capacity;

(d)

devices that monitor and limit both the flow and pressure placed on the UST and the piping from the AST to the UST during the delivery of regulated substance such that the delivery pipe pressure shall not exceed normal operating pressure in accordance with the manufacturer's specification; and

(e)

a tank venting system, which must be adequately sized to ensure that atmospheric pressure is continuously maintained, including during filling and emptying of tank.

F. Secondary

containment. Owners and operators shall comply with the secondary containment requirements as follows:

(1) Tanks and

piping for UST systems with field-constructed tanks replaced after the effective date of these regulations shall be secondarily contained upon installation for tanks with capacities of 50,000 gallons or less that are not part of an airport hydrant system.

(2) Secondary

containment shall not be required for piping on UST systems with field-constructed tanks that are replaced after the effective date of these regulations where the tank capacity is greater than 50,000 gallons.

(3) Hydrant

pits installed on existing airport hydrant systems after the effective date of these regulations shall be secondarily contained.

G. Owners and

operators shall use one of the following codes of practice to comply with corrosion protection requirements in this section:

(1) *NACE*

International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems

by Cathodic Protection";

(2) *NACE*

International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";

(3) *National*

Leak Prevention Association Standard 631, Chapter C, "Internal Inspection of Steel Tanks for Retrofit of Cathodic Protection"; or

(4) *American*

Society for Testing and Materials Standard G158, "Standard Guide for Three Methods of Assessing Buried Steel Tanks".

H. In addition to

the industry codes of practice and standards listed in 20.5.106 NMAC and 20.5.109 NMAC owners and operators may use *Unified Facilities Criteria (UFC) 3-460-01, "Design: Petroleum Fuel Facilities"* to comply with these requirements.

[20.5.114.1401 NMAC - N, 07/24/2018]

20.5.114.1402 ADDITIONAL REQUIREMENTS FOR HYBRID STORAGE TANK SYSTEMS.

A. Owners and operators of hybrid storage tank systems shall, no later than one year after the effective date of these regulations, install redundant automatic shut off and manual override equipment on the piping transferring a regulated substance from the AST to the UST in order to prevent overfills.

B. Owners and operators of existing hybrid storage tank systems who replace the underground piping on or after the effective date of these regulations shall install double walled piping including but not limited to the underground remote fill piping. Containment sumps shall be installed at both ends of the underground piping. The new underground piping shall be interstitially monitored monthly in accordance with 20.5.108.811 NMAC or 20.5.8.813 NMAC as applicable upon installation.

[20.5.114.1402 NMAC - N, 07/24/2018]

20.5.114.1403 NEW AIRPORT HYDRANT SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS.

A. Owners and operators of airport hydrant systems and field-constructed USTs installed after the effective date of the regulations shall comply with all applicable parts of 20.5 NMAC upon installation.

B. Airport hydrant systems shall not be required to meet secondary containment requirements for piping.

C. UST systems with field-constructed tanks with a tank capacity greater than 50,000 gallons shall not be required to meet secondary containment requirements for piping.

D. Owners and operators shall not install hybrid storage tank systems after the effective date of these regulations. [20.5.114.1403 NMAC - N, 07/24/2018]

20.5.114.1404 OPERATION AND MAINTENANCE OF AIRPORT HYDRANT SYSTEMS, USTs WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS.

Owners and operators shall comply with the requirements in 20.5.107 NMAC and 20.5.110 NMAC no later than three years after the effective date of these regulations for existing systems and upon installation for new systems. In addition to the monthly inspection requirements in 20.5.107.707 NMAC, owners and operators must inspect the following additional areas for airport hydrant systems at least once every 30 days if confined space entry per the occupational safety and health administration (see 29 CFR part 1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection per 20.5.107.714 NMAC.

A. Hydrant pits-
-visually check for any damage; remove any liquid or debris; and

check for any leaks, and

B. Hydrant piping vaults--check for any hydrant piping leaks.

[20.5.114.1404 NMAC - N, 07/24/2018]

20.5.114.1405 OPERATOR TRAINING REQUIREMENTS FOR AIRPORT HYDRANT SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS:

Owners and operators shall comply with the requirements in 20.5.104 NMAC no later than three years after the effective date of these regulations for existing systems and upon installation for new systems.

[20.5.114.1405 NMAC - N, 07/24/2018]

20.5.114.1406 DEADLINE FOR IMPLEMENTATION OF RELEASE DETECTION:

Owners and operators of existing airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems shall meet release detection requirements described in this part no later than three years after the effective date of these regulations.

[20.5.114.1406 NMAC - N, 07/24/2018]

20.5.114.1407 METHODS OF RELEASE DETECTION FOR UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS.

A. Owners and operators of field-constructed tanks with a capacity less than or equal to 50,000 gallons shall meet the release detection requirements in 20.5.108 NMAC.

B. Owners and operators of field-constructed tanks with a capacity greater than 50,000 gallons shall meet either the requirements in 20.5.108 NMAC (except 20.5.108.806 NMAC and 20.5.108.807 NMAC shall be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

(1) conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;

(2) use an automatic tank gauging system that can detect a leak rate less than or equal to one gallon per hour to perform release detection at least every 30 days. This method shall be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate that is performed at least every three years;

(3) use an automatic tank gauging system that can detect a leak rate less than or equal to two gallons per hour to perform release detection at least every 30 days. This method shall be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate that is performed at least every two years;

(4) perform vapor monitoring (conducted in accordance with 20.5.108.806 NMAC for a tracer compound placed in the storage tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(5) perform inventory control (conducted in accordance with department of defense *Directive 4140.25-M; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual*; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(a) perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or

(b) perform vapor monitoring or groundwater monitoring (conducted in accordance with 20.5.108.806 NMAC and 20.5.108.807 NMAC, respectively, for the stored regulated substance) at least every 30 days.

[20.5.114.1407 NMAC - N, 07/24/2018]

20.5.114.1408 METHODS OF RELEASE DETECTION FOR PIPING.

A. Owners and

operators of underground piping associated with USTs with field-constructed tanks less than or equal to 50,000 gallons shall meet the release detection requirements in 20.5.108 NMAC.

B. Owners and operators of underground piping associated with airport hydrant systems and USTs with field-constructed tanks greater than 50,000 gallons shall follow either the requirements in 20.5.108 NMAC (except 20.5.108.806 NMAC and 20.5.108.807 NMAC shall be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

(1) Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

Continued on the following page

Maximum Leak Detection Rate Per Test Section Volume		
Test Section Volume (Gallons)	Semiannual Test - Leak Detection Rate Not to Exceed (Gallons Per Hour)	Annual Test - Leak Detection Rate Not to Exceed (Gallons Per Hour)
< 50,000	1.0	0.5
≥ 50,000 to < 75,000	1.5	0.75
≥ 75,000 to < 100,000	2.0	1.0
≥ 100,000	3.0	1.5

(2) Piping segment volumes greater than or equal to 100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test shall test according to the following schedule:

(a) First test shall be conducted no later than three years after the effective date of these regulations and the leak rate the test shall be no greater than six gallons per hour.

(b) Second test shall be conducted no later than six years after the effective date of these regulations and the leak rate for the test shall be no greater than six gallons per hour.

(c) Third test shall be conducted no later than seven years after the effective date of these regulations and the leak rate for the test shall be three gallons per hour.

(d) Subsequent tests conducted after seven years from the effective date of these regulations shall be semiannual or annual and conducted in accordance with Subparagraph (1) of this section.

(3) Perform vapor monitoring (conducted in accordance with 20.5.108.806 NMAC for a tracer compound placed in the storage tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(4) Perform inventory control (conducted in accordance with department of defense *Directive 4140.25-M; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual*; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(a) perform a line tightness test (conducted in accordance with Paragraph (1) of this section using the leak rates for the semiannual test) at least every two years; or

(b) perform vapor monitoring or groundwater monitoring (conducted in accordance with 20.5.108.806 NMAC and 20.5.108.807 NMAC, respectively, for the stored regulated substance) at least every 30 days; or

(5) Another method approved by the implementing agency if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in Paragraphs (1) through (4) of this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect as well as the frequency and reliability of detection.

C. Owners and operators of hybrid storage tank systems shall meet release detection requirements for the piping between the above ground tank and the underground tank as follows:

(1) existing above ground piping may be monthly monitored by use of visual inspection if the requirements in 20.5.111.1102 NMAC are met; or

(2) existing underground piping shall meet the requirements for release detection in 20.5.108 NMAC.

[20.5.114.1408 NMAC - N, 07/24/2018]

20.5.114.1409 RELEASE REPORTING: Owners and operators shall report any suspected or confirmed releases to the department in accordance with the requirements in 20.5.118 NMAC.

[20.5.114.1409 NMAC - N, 07/24/2018]

20.5.114.1410 CLOSURE REQUIREMENTS: Owners and operators of airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems shall comply with closure requirements in 20.5.115 NMAC for temporary closure, return to service, and permanent closures.

A. Owners and operators of hybrid storage tank systems shall permanently close any above ground storage tanks in accordance with the requirements in 20.5.115.1502 NMAC within 12 months of placing them in temporary closure. Once owners and operators have placed the above ground storage tanks into temporary closure they can no longer return them to service.

B. Owners and operators shall use the *Unified Facilities Criteria (UFC) 3-460-01, "Design: Petroleum Fuel Facilities"* to comply with the requirements in this section.

[20.5.114.1410 NMAC - N, 07/24/2018]

20.5.114.1411 APPLICABILITY OF CLOSURE REQUIREMENTS TO PREVIOUSLY CLOSED STORAGE TANK SYSTEMS:

When directed by the department, the owner and operator of an UST system with field-constructed tanks, airport hydrant system, or hybrid storage tank system permanently closed before the effective date of these regulations must assess the excavation zone and close the storage tank system in accordance with 20.5.115 NMAC if releases from the storage tank system may, in the judgment of the department, pose a current or potential threat to human health and the environment.

[20.5.114.1411 NMAC - N, 07/24/2018]

20.5.114.1412 ALTERNATE METHOD REQUEST: Owners and operators of airport hydrant fuel distribution systems and UST systems with field-constructed tanks shall comply with either 20.5.106.617 NMAC, 20.5.107.713 NMAC, 20.5.109.920 NMAC, and 20.5.110.1014 NMAC when submitting an alternate methods request.

[20.5.114.1412 NMAC - N, 07/24/2018]

20.5.114.1413 RECORD KEEPING: Owners and operators shall maintain records, including release detection records, according to the recordkeeping requirements in 20.5.107.714 NMAC, 20.5.108.815 NMAC, 20.5.110.1015 NMAC and 20.5.111.1111 NMAC.

[20.5.114.1413 NMAC - N, 07/24/2018]

20.5.114.1414 REPORTING: Owners and operators shall meet the reporting requirements in 20.5.107.715 NMAC, 20.5.108.816 NMAC, 20.5.110.1016 and 20.5.111.1112 NMAC.

[20.5.114.1414 NMAC - N, 07/24/2018]

History of 20.5.114 NMAC [RESERVED]

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 115 OUT-OF-
SERVICE STORAGE TANK
SYSTEMS AND CLOSURE**

20.5.115.1 ISSUING

AGENCY: New Mexico Environmental Improvement Board.
[20.5.115.1 NMAC - N, 07/24/2018]

20.5.115.2 SCOPE: This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance. Owners and operators of airport hydrant systems, field-constructed tanks, and hybrid storage tank systems shall follow the requirements for temporary closure and return to service requirements in 20.5.114 NMAC in addition to the requirements in this part.

[20.5.115.2 NMAC - N, 07/24/2018]

20.5.115.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-16 NMSA 1978.

[20.5.115.3 NMAC - N, 07/24/2018]

20.5.115.4 DURATION:

Permanent.
[20.5.115.4 NMAC - N, 07/24/2018]

20.5.115.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.115.5 NMAC - N, 07/24/2018]

20.5.115.6 OBJECTIVE:

The purpose of 20.5.115 NMAC is to regulate storage tank systems to protect the public health, safety and welfare and the environment of the state, and to provide safe and effective closure requirements for out-of-service systems.

[20.5.115.6 NMAC - N, 07/24/2018]

20.5.115.7 DEFINITIONS:

The definitions in 20.5.101 NMAC apply to this part.

[20.5.115.7 NMAC - N, 07/24/2018]

20.5.115.8 to 20.5.115.1499 [RESERVED]**20.5.115.1500 REQUIRED NOTIFICATION PRIOR TO TEMPORARY OR PERMANENT CLOSURE, RETURN TO SERVICE, REMOVAL, OR CHANGE IN SERVICE:**

A. Notice required.

(1) At least

30 days before beginning either permanent closure, temporary closure, return to service, change in service, or removal of a tank pursuant to this part, or within another reasonable time period if approved in advance by the department, owners and operators shall notify the department in writing of their intent to remove, close or make the return to or change in service, unless such action is in response to corrective action.

(2) If owners

and operators do not notify the department that a tank is out of service, the tank shall be considered to be in service for the purpose of these regulations.

(3)

Additionally, owners and operators shall notify the department in writing at least 30 days prior to placing any regulated substance into a tank that has been in temporary or permanent closure, or before a return to service.

B. Opportunity for inspector to be present. To ensure that a department inspector has an opportunity to be present during the steps in procedures which are

important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the removal, change in service, return to service and closure of the storage tank system are to take place. This notice shall be given at least 24 hours before any critical juncture begins, and shall be either oral or written. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

C. Critical junctures.

For removal, change in service, return to service, or storage tank system closure, the term “critical junctures” means:

- (1) completion of the excavation of a UST or piping;
- (2) cleaning and inerting of a tank;
- (3) the actual removal of a UST or its associated piping from the ground, or the filling of a UST in place;
- (4) actual permanent closure of an AST and its associated piping from any location where it has been in use; and
- (5) assessment of a tank site for releases.

D. At a minimum, the notice for removal, change in service, return to service or temporary or permanent closure of a storage tank system shall contain the following information:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county), and telephone number;
- (3) owner name, owner ID number, and address, and telephone number;
- (4) description of type of change of status (change in service, return to service or closure);
- (5) expected date of change in service, return to service or closure; and
- (6) signature of owner, operator or an authorized representative.

E. In addition to

the written notices described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection D of this section, such as different equipment or removal methods.

F. If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.115.1500 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used. The form is available on the petroleum storage tank bureau’s pages on the department website or by contacting the petroleum storage tank bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, NM 87505.]

20.5.115.1501 TEMPORARY CLOSURE AND RETURN TO SERVICE:

A. When a storage tank system is in temporary closure and the tank contains greater than one inch or 0.3 percent by weight of the total capacity of the storage tank system of a regulated substance, owners and operators shall:

- (1) continue to operate, maintain, and monitor corrosion protection systems in accordance with 20.5.107 NMAC and 20.5.110 NMAC;
- (2) continue to maintain financial responsibility in accordance with 20.5.117 NMAC;
- (3) continue to meet the requirements for operator training in 20.5.104 NMAC;
- (4) continue to meet operation and maintenance requirements for secondary containment, spill prevention equipment, overfill prevention equipment, and release detection, in accordance with 20.5.107 NMAC and

20.5.110 NMAC;

(5) continue to meet release detection requirements in 20.5.108 NMAC and 20.5.111 NMAC;

(6) continue to meet piping release detection requirements in 20.5.108 NMAC or 20.5.111 NMAC until the piping is purged of regulated substances and capped; and

(7) continue to comply with 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC if a release is suspected or confirmed.

B. As long as a storage tank system is in temporary closure and the tank contains one inch or less or the storage tank system contains 0.3 percent by weight or less of the total capacity of the storage tank system of a regulated substance, owners and operators shall comply with Subsection A of this section except for the following:

- (1) release detection requirements in 20.5.108 NMAC and 20.5.111 NMAC;
- (2) periodic testing and inspection requirements for spill prevention, overfill prevention, release detection, and secondary containment in 20.5.107 NMAC and 20.5.110 NMAC;
- (3) periodic operation and maintenance walk-through inspections in 20.5.107.707 NMAC and 20.5.110.1008 NMAC; and
- (4) If the storage tank system does not have steel components that are in contact with soil, water, or concrete, owners and operators are exempt from operator re-training requirements in 20.5.104 NMAC.

C. When a storage tank system is temporarily closed for three months or more, owners and operators shall also comply with all of the following requirements:

- (1) leave vent lines open and functioning;
- (2) cap and secure all other lines, pumps, manways, and ancillary equipment; and

(3) for AST systems, disconnect and cap all associated piping from the AST as soon as the tank is emptied in accordance with Subsection B of this section.

D. When a UST system is temporarily closed for more than 12 months, owners and operators shall permanently close the UST system if it does not meet either performance standards for new UST systems or the UST system upgrade requirements in 20.5.106 NMAC, except that the spill and overfill equipment requirements do not have to be met. Owners and operators shall permanently close any substandard storage tank systems at the end of this 12-month period in accordance with 20.5.115 NMAC, unless the department provides an extension of the 12-month temporary closure period. Owners and operators shall complete a site assessment in accordance with 20.5.115 NMAC and shall be current with all tank fees before applying for such an extension.

E. When an AST system is temporarily closed for more than 12 months, owners and operators shall permanently close the AST system if it does not meet the performance standards for new AST systems in 20.5.109 NMAC except that the spill and overfill equipment requirements do not have to be met. Owners and operators shall permanently close any substandard storage tank systems at the end of this 12-month period in accordance with 20.5.115 NMAC, unless the department provides an extension of the 12-month temporary closure period. Owners and operators shall complete a site assessment in accordance with 20.5.115 NMAC and shall be current with all tank fees before applying for such an extension.

F. When a storage tank system will be temporarily closed for more than 12 cumulative months, owners and operators must apply for an extension at least 30 days prior to the end of the twelfth cumulative month. In order to apply for an extension, owners and operators shall:

(1) empty the tank and purge the piping of regulated

substances so that the tank contains one inch or less or the system contains three-tenths percent by weight or less of the total capacity of the storage tank system of a regulated substance;

(2) perform a site assessment in accordance with 20.5.115.1504 NMAC;

(3) pay all annual tank fees and all accrued late fees for all tanks they own or operate in accordance with 20.5.103 NMAC;

(4) meet financial responsibility requirements in 20.5.117 NMAC;

(5) apply in writing to the department and include records demonstrating completion of Paragraphs (1) through (4) of Subsection F of this section and include all of the information in Subsection D of 20.5.115.1500 NMAC.

G. When a field-erected AST system or field constructed UST system has been temporarily closed for three months or more and meets the performance standards for new storage tank systems in 20.5.106 NMAC, 20.5.109 NMAC, or 20.5.114 NMAC, prior to placing any regulated substance in the system, owners and operators shall:

(1) perform an internal inspection, integrity test, or tightness test on the tank in accordance with the requirements in 20.5.108 NMAC, 20.5.111 NMAC, or 20.5.114 NMAC;

(2) perform a tightness test on all piping in accordance with the requirements in 20.5.108 NMAC, 20.5.111 NMAC, or 20.5.114 NMAC; and

(3) perform functionality testing or inspections on leak detection equipment in accordance with the requirements for annual or periodic testing in 20.5.108 NMAC, 20.5.111 NMAC, or 20.5.114 NMAC.

H. After temporary or permanent closure and before returning any part of a storage tank system to service, owners and operators shall demonstrate the integrity of the entire storage tank system in a manner approved in

advance by the department.

I. A delivery of a regulated substance into a tank in temporary closure shall be considered a return to service and all of the requirements for a tank in service shall be met.

J. Owners and operators of temporarily or permanently closed storage tank systems shall use one or more of the following as applicable to the type of storage tank system to meet the requirements in this section:

(1) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems";*

(2) *American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction";*

(3) *American Petroleum Institute Publication RP 1110, "Recommended Practice for the Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquid, or Carbon Dioxide";*

(4) *Petroleum Equipment Institute Recommended Practice RP 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor-Vehicle Fueling";*

(5) *Unified Facilities Criteria (UFC) 3-460-01, "Petroleum Fuel Facilities";* or

(6) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code".*

[20.5.115.1501 NMAC - N, 07/24/2018]

20.5.115.1502 PERMANENT CLOSURE:

A. To permanently close a tank, owners and operators shall empty and clean it by removing all liquids, accumulated sludges, and vapors. Owners and operators shall properly dispose of any liquids and sludge removed from a storage tank.

(1) Owners and operators shall either remove from the ground all USTs closed permanently, fill them with an inert

solid material or close in place in a manner approved by the department.

(2) Owners and operators shall perform the following closure operations on AST systems:

(a) ASTs being closed in place shall be rendered vapor free; owners and operators shall make provisions for adequate ventilation to ensure that the AST remains vapor free;

(b) vent lines shall remain open and shall be maintained in accordance with the current edition of a standard or code of practice developed by a nationally recognized association or independent testing laboratory, or manufacturer's recommendations;

(c) all access openings shall be secured, normally with spacers, to assist ventilation;

(d) ASTs shall be secured against tampering and flooding;

(e) the name of the product last stored, the date of permanent closure and "PERMANENTLY CLOSED" shall be stenciled in a readily visible location on each AST;

(f) piping shall be removed or closed in place; if closed in place, piping shall be disconnected from ASTs, rendered vapor free, and filled with inert material, capped or blind flanged; owners and operators seeking to close piping in place shall propose a closure plan for the piping in writing to the department at least 30 days prior to closure; the department may approve the plan on a case-by-case basis, after considering the extent and depth of piping, the proximity of the piping to buildings, the extent of pavement at the facility, and other factors raised by owners and operators; if the department does not approve a closure plan, owners and operators shall remove the piping; and

(g) owners and operators shall dismantle or remove AST systems and secondary containment to the extent needed to conduct the site assessment

required in 20.5.115.1504 NMAC.

(3) For mobile AST systems, owners and operators shall perform all of the closure requirements in Paragraph (2) of this subsection, except they need not perform the requirements of Subparagraph (e) of Paragraph (2) of this subsection. Owners and operators shall remove or cap piping when permanently closing a mobile AST. Owners and operators shall perform a site assessment that complies with the requirements of 20.5.115.1504 NMAC before permanent closure of any permanently installed mobile tank is completed.

B. The current edition of the following cleaning and closure procedures shall be used to comply with this section as applicable:

(1) *American Petroleum Institute Publication RP 1604, "Closure of Underground Petroleum Storage Tanks";*

(2) *American Petroleum Institute Standard 2015, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks";*

(3) *American Petroleum Institute Publication RP 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";*

(4) *American Petroleum Institute Publication 2202, "Guidelines for Protecting Against Lead Hazards when Dismantling and Disposing of Steel from Tanks that have Contained Leaded Gasoline";*

(5) *American Petroleum Institute Publication RP 1631, "Interior Lining and Periodic Inspections of Underground Storage Tanks";* or

(6) *The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard: Working in Confined Space".*

C. Owners and operators shall perform an assessment meeting the requirements of 20.5.115.1504 NMAC after notifying the department but before completion of permanent closure.

D. Owners and

operators that have installed any monitoring wells as release detection pursuant to 20.5.108 NMAC shall properly close the wells in a manner approved by the department as part of permanent closure activities.

[20.5.115.1502 NMAC - N, 07/24/2018]

20.5.115.1503 CHANGES IN SERVICE:

A. Continued use of a storage tank system to store a non-regulated substance is a change in service.

B. Owners and operators shall notify the department in compliance with 20.5.115.1500 NMAC of any change in service, and any change in location of AST systems that are operational and registered pursuant to 20.5.102 NMAC.

C. Before a change in service, owners and operators shall empty and clean the tank by removing all liquid and accumulated sludge, and shall properly dispose of any liquids and sludge removed from a storage tank. Owners and operators shall also conduct a site assessment meeting the requirements of 20.5.115.1504 NMAC. The current edition of the following cleaning and closure procedures shall be used as applicable to comply with the requirements of this section:

(1) *American Petroleum Institute Publication RP 1604, "Closure of Underground Petroleum Storage Tanks";*

(2) *American Petroleum Institute Standard 2015, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks";*

(3) *American Petroleum Institute Publication RP 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";*

(4) *American Petroleum Institute Publication 2202, "Guidelines for Protecting Against Lead Hazards when Dismantling and Disposing of Steel from Tanks that have Contained Leaded Gasoline";*

(5) *American*

Petroleum Institute Publication RP 1631, "Interior Lining and Periodic Inspections of Underground Storage Tanks"; or

(6) *The*

National Institute for Occupational Safety and Health "Criteria for a Recommended Standard: Working in Confined Space".

[20.5.115.1503 NMAC - N, 07/24/2018]

20.5.115.1504 ASSESSING THE SITE AT CLOSURE OR CHANGE IN SERVICE:

A. Before permanent closure or a change in service is completed, owners and operators shall measure for the presence of a release where contamination is most likely to be present at the storage tank site.

(1) In selecting sample types, sample locations, and measurement methods, the bureau shall consider the method of closure, the nature of the stored regulated substance, the type of backfill for any USTs, the depth to groundwater, and other factors appropriate for identifying the presence of a release. Examples of sample locations may include but are not limited to piping junctions, under dispensers and under storage tanks.

(2) A bureau inspector may waive the requirement for soil sampling when an AST is closed or may require alternate tests for the presence of a release, based on site specific conditions that demonstrate equivalent environmental protection. For example, at a site where an AST has been operated for less than 10 years with impervious secondary containment, the inspector may waive soil sampling as the secondary containment would have effectively prevented any release outside the containment. The bureau may require soil sampling or a site assessment at a later date if site-specific circumstances indicate that a release may have occurred.

(3) The requirements of this section are satisfied if one of the external release detection methods allowed in 20.5.108.806 NMAC and

20.5.108.807 NMAC is operating in accordance with the requirements in 20.5.108 NMAC at the time of closure, and indicates no release has occurred.

B. If contaminated soils, contaminated groundwater, non-aqueous phase liquid or vapor is discovered as a result of activities required by this section, or by any other manner, owners and operators shall notify the department in accordance with 20.5.118 NMAC and begin corrective action in accordance with 20.5.119 NMAC and 20.5.120 NMAC.

[20.5.115.1504 NMAC - N, 07/24/2018]

20.5.115.1505 APPLICABILITY TO PREVIOUSLY CLOSED STORAGE TANK SYSTEMS:

A. When directed by the department, owners and operators of UST systems permanently closed before December 22, 1988, shall assess the excavation zone and close the UST systems in accordance with this part if releases from the UST system may, in the judgment of the department, pose a current or potential threat to public health, safety and welfare and the environment.

B. When directed by the department, owners and operators of AST systems permanently closed before August 15, 2003, shall assess the entire AST system area and close the AST systems in accordance with this part if releases from the AST system may, in the judgment of the department, pose a current or potential threat to public health, safety and welfare and the environment.

[20.5.115.1505 NMAC - N, 07/24/2018]

20.5.115.1506 CLOSURE RECORDS:

A. Owners and operators shall maintain records in accordance with 20.5.107 NMAC and 20.5.110 NMAC that demonstrate compliance with all closure requirements of this part.

B. Owners and operators shall ensure that the results of the assessment required in

20.5.115.1504 NMAC are maintained in accordance with 20.5.107.714 NMAC and 20.5.110.1015 NMAC after completion of permanent closure or change in service in one of the following ways:

(1) by the owners and operators who took the storage tank system out of service;

(2) by the current owners and operators of the storage tank system site; or

(3) by mailing these records to the department if they cannot be maintained at the closed facility.

[20.5.115.1506 NMAC - N, 07/24/2018]

HISTORY OF 20.5.115 NMAC:

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

EIB/USTR-8, Underground Storage Tank Regulations - Part VIII - Out-Of-Service UST Systems And Closure, filed 9/12/88.

EIB/USTR-8, Underground Storage Tank Regulations - Part VIII - Out-Of-Service UST Systems And Closure, filed 8/4/89.

EIB/USTR-8, Underground Storage Tank Regulations - Part VIII - Out-Of-Service UST Systems And Closure, filed 6/12/90.

History of Repealed Material: EIB/USTR-8, Underground Storage Tank Regulations - Part VIII - Out-Of-Service UST Systems And Closure (filed 2/27/97), repealed 8/15/03. 20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure (filed 7/16/03) repealed 4/4/08.

20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure (filed 4/4/08) repealed 7/24/18.

Other History:

EIB/USTR-8, Underground Storage Tank Regulations - Part VIII - Out-Of-Service UST Systems And Closure (filed 6/12/90) renumbered, reformatted and replaced by 20

NMAC 5.8, Underground Storage Tanks - Out-Of-Service Systems And Closure, effective 11/5/95.
 20 NMAC 5.8, Underground Storage Tanks - Out-Of-Service Systems And Closure (filed 10/6/95) was replaced by 20 NMAC 5.8, Underground Storage Tanks - Out-Of-Service Systems And Closure, effective 4/1/97.
 20 NMAC 5.8, Underground Storage Tanks - Out-Of-Service Systems And Closure (filed 2/27/97) was renumbered, reformatted and replaced by 20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure, effective 8/15/03.
 20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure (filed 7/16/03) replaced by 20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure, effective 4/4/08.
 20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure (filed 7/16/03) was renumbered reformatted, and replaced by 20.5.115 NMAC, Petroleum Storage Tanks - Out-Of-Service Storage Tank Systems And Closure, effective 7/24/18.

**ENVIRONMENT
 DEPARTMENT
 RESOURCE PROTECTION
 DIVISION**

**TITLE 20
 ENVIRONMENTAL
 PROTECTION
 CHAPTER 5 PETROLEUM
 STORAGE TANKS
 PART 116 DELIVERY
 PROHIBITION**

20.5.116.1 ISSUING
AGENCY: New Mexico Environmental Improvement Board.
 [20.5.116.1 NMAC - N, 07/24/2018]

20.5.116.2 SCOPE: This part applies to owners and operators of storage tanks and facilities holding petroleum and to product deliverers, as defined in 20.5.101 NMAC, who deliver petroleum, and to any person subject to the provisions of 20.5

NMAC.
 [20.5.116.2 NMAC - N, 07/24/2018]

20.5.116.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Groundwater Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.
 [20.5.116.3 NMAC - N, 07/24/2018]

20.5.116.4 DURATION:
 Permanent.
 [20.5.116.4 NMAC - N, 07/24/2018]

20.5.116.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
 [20.5.116.5 NMAC - N, 07/24/2018]

20.5.116.6 OBJECTIVE: The purpose of this part is to set forth the prohibitions for the delivery, deposit, or acceptance of product at or to a storage tank or a facility that has been determined by the department to be ineligible for such delivery, deposit or acceptance, in order to protect the public health, safety and welfare and the environment of the state.
 [20.5.116.6 NMAC - N, 07/24/2018]

20.5.116.7 DEFINITIONS:
 The definitions in 20.5.101 NMAC shall apply to this part.
 [20.5.116.7 NMAC - N, 07/24/2018]

20.5.116.8 to 20.5.116.1599 [RESERVED]

20.5.116.1600 GENERAL: It shall be unlawful for any owner, operator or product deliverer to deliver to, deposit into or accept a regulated substance at or to a storage tank or a facility that has been identified by the department as ineligible for product delivery, deposit or acceptance. It shall also be unlawful for any person to remove, tamper with, destroy or damage a red

tag or certificate posted pursuant to this part.
 [20.5.116.1600 NMAC - N, 07/24/2018]

20.5.116.1601 DELIVERY PROHIBITIONS:

A. Mandatory ineligibility. The department shall classify a storage tank as ineligible for delivery, deposit or acceptance of product if any of the following conditions exist at the storage tank, or shall classify a facility as ineligible for delivery or acceptance of product if any of the following conditions exist at every storage tank at the facility:

- (1) required spill prevention equipment is not installed;
- (2) required overfill protection equipment is not installed;
- (3) required leak detection equipment is not installed; or
- (4) required corrosion protection equipment is not installed, including required corrosion protection equipment for a buried metal flexible connector.

B. Discretionary ineligibility. The department may, in its sole discretion, classify a storage tank as ineligible for delivery, deposit or acceptance of product if any of the following conditions exist at the storage tank, or may classify a facility as ineligible for delivery, deposit or acceptance of product if any of the following conditions exist at every storage tank at the facility:

- (1) improper operation or maintenance of required equipment for:
 - (a) spill prevention;
 - (b) overfill prevention;
 - (c) leak detection;
 - (d) corrosion protection; or
- (2) operation of the storage tank or facility in a manner that creates an imminent threat to public health and the

environment.

[20.5.116.1601 NMAC - N,
07/24/2018]

20.5.116.1602 PROCEDURES FOR CLASSIFYING A STORAGE TANK OR FACILITY AS INELIGIBLE:

A. Mandatory ineligibility. Notice of intent to red tag: Upon identification of a condition or conditions at one or more storage tanks at a facility under Subsection A of 20.5.116.1601 NMAC, the department shall issue the owner and operator a notice of intent to red tag stating the violations and providing the owner or operator 30 days from the date of the notice to correct the violations. The notice of intent to red tag shall inform the owner and operator that the department will prohibit delivery to each storage tank with one or more conditions identified under 20.5.116.1601 NMAC at the facility if the violations are not corrected. The notice of intent to red tag shall state if the facility is in a rural and remote area as defined in 20.5.101.7 NMAC, and shall grant a deferral as provided in 20.5.116.1608 NMAC.

B. Discretionary ineligibility.

(1) Notice of violation. Upon identification of a condition or conditions at one or more storage tanks at a facility under Subsection B of 20.5.116.1601 NMAC, the department shall issue the owner and operator a notice of violation stating the violation and providing the owner or operator 30 days from the date of the notice to correct the violation. The notice of violation shall inform the owner and operator that the violation cited could subject the owner and operator to delivery prohibition at the identified tanks if the violations are not corrected.

(2) Notice of deficiency. If the owner or operator fails to correct the violations within the timeframe provided in the notice of violation, the department shall issue the owner or operator a notice of deficiency re-stating the

violations and providing the owner or operator an additional 30 days from the date of the notice to correct the violations. The notice of deficiency shall inform the owner and operator that the violations cited could subject the owner and operator to delivery prohibition at the identified tanks if the violations are not corrected.

(3) Notice of intent to red tag. If the owner or operator fails to correct the violations within the timeframe provided in the notice of deficiency, the department shall issue the owner or operator a notice of intent to red tag re-stating the violations and providing the owner or operator an additional 30 days from the date of the notice to correct the violations. The notice of intent to red tag shall inform the owner and operator that the department will prohibit delivery to the identified tanks at the facility if the violations are not corrected. The notice of intent to red tag shall state if the facility is in a rural and remote area as defined in 20.5.101.7 NMAC, and shall grant a deferral as provided in 20.5.116.1608 NMAC.

C. Red tag placement and ineligibility for delivery. If the owner or operator fails to correct the violations within the timeframe provided in the notice of intent to red tag, the department shall affix a red tag to the fill pipe of every storage tank with one or more conditions identified under 20.5.116.1601 NMAC at the facility pursuant to 20.5.116.1603 NMAC.

D. Notification of installation, replacement, repair or modification. Owners and operators shall give the department notice of any installation, replacement, repair or modification performed to correct the conditions listed in the notice of violation, notice of deficiency or notice of intent to red tag in accordance with 20.5.106 NMAC, 20.5.107 NMAC, 20.5.109 NMAC, and 20.5.110 NMAC. The department may grant a waiver shortening the notification time periods required by those parts if warranted by the circumstances.

[20.5.116.1602 NMAC - N,

07/24/2018]

20.5.116.1603 IDENTIFICATION OF INELIGIBLE STORAGE TANKS OR FACILITIES:

A. Red tag. In order to prevent the delivery, deposit or acceptance of product at or to a storage tank or a facility that has been identified by the department as ineligible under 20.5.116.1601 NMAC and 20.5.116.1602 NMAC, the department shall affix a tamper-proof red tag to the fill pipe of every storage tank with one or more conditions identified under 20.5.116.1601 NMAC at the facility 48 hours after posting the name and address of the facility on the department's website list of facilities that are ineligible for delivery. The department shall document the level of stored product in each storage tank with one or more conditions identified under 20.5.116.1601 NMAC prior to affixing a red tag to the fill pipe(s) of the storage tank.

B. Certificate. In order to prevent the delivery, deposit or acceptance of product at or to a storage tank or a facility that has been classified by the department as ineligible under 20.5.116.1601 NMAC, the department shall post a certificate, conspicuously displayed at the facility, clearly prohibiting the delivery, deposit or acceptance of product at every storage tank at the facility to which the department has affixed a red tag.

C. Red tag tampering prohibited. It shall be unlawful for any person, other than an authorized representative of the department, to remove, tamper with, destroy or damage a red tag affixed to any storage tank or a certificate posted at a storage tank facility by department personnel.

D. Performance standards. Owners and operators shall continue to adhere to all performance standards of 20.5 NMAC after placement of one or more red tags and a certificate at a facility, including but not limited to leak detection, corrosion protection and monthly inspections.

[20.5.116.1603 NMAC - N,
07/24/2018]

**20.5.116.1604 REGULATED
SUBSTANCE REMOVAL:**

Owners and operators shall empty all regulated substances from storage tanks that have been affixed with a red tag if the violations have not been corrected within 30 days of the placement of the red tag. This section shall not limit or supersede the application of 20.5.118 NMAC in the event of a suspected or confirmed release. If no suspected or confirmed release exists, owners and operators shall:

A. empty all regulated substances from each storage tank at the facility that has been affixed with a red tag in accordance with 20.5.115 NMAC, and shall provide written notice to the inspector who issued the red tag when each tank has been emptied, with the name, address, telephone number and email address of the person who removed the regulated substances from the tank; and

B. continue to meet all requirements for temporary closure in 20.5.115.1501 NMAC, including operation of cathodic protection and release detection equipment and payment of the annual fee, or shall permanently close the storage tank system in accordance with 20.5.115.1502 NMAC.

[20.5.116.1604 NMAC - N,
07/24/2018]

**20.5.116.1605 PERMANENT
CLOSURE:** Owners and operators shall permanently close a storage tank system that has been affixed with a red tag if the violations associated with the red tag have not been corrected within 12 months of the placement of the red tag. Permanent closure must meet the requirements in 20.5.115.1502 NMAC, including notification requirements.

[20.5.116.1605 NMAC - N,
07/24/2018]

**20.5.116.1606 RED
TAG PLACEMENT AND
NOTIFICATION PROCESSES**

**FOR STORAGE TANK OWNERS
AND OPERATORS AND
PRODUCT DELIVERERS:**

A. Owners and operators. Notification of red tag placement, including a tank's status as being ineligible for deliveries, shall be provided to an owner or operator in the following manner:

(1) Owner or operator present. If the owner or operator is present on the site, the department shall provide to the owner or operator the notice of red tag placement and ineligibility for delivery.

(2) Owner and operator not present. If neither the owner nor operator is present on the site, the department shall immediately notify an employee in charge of the facility, if such employee is present, of red tag placement and ineligibility for delivery and shall send a copy of the written notice to the owner and operator within 24 hours of notifying the employee in charge of the facility or of affixing a red tag and certificate.

B. Product deliverers. The department shall notify all product deliverers 48 hours before the department affixes a red tag to the fill pipes of each storage tank with one or more conditions identified under 20.5.116.1601 NMAC by posting the name and address of the facility on the department's website list of facilities that contain storage tanks which are ineligible for delivery. Product deliverers shall be responsible for checking the website or contacting the department prior to any product delivery.

[20.5.116.1606 NMAC - N,
07/24/2018]

[The department provides a list of storage tank facilities containing storage tanks with delivery prohibitions. The list is available on the petroleum storage tank bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.116.1607 RECLASSIFYING
INELIGIBLE STORAGE TANKS**

**OR FACILITIES AS ELIGIBLE
TO RECEIVE PRODUCT:**

A. Statement of compliance from owner or operator. In order for an owner or operator of a storage tank or facility which has been determined by the department as ineligible under this rule to have the storage tank or facility reclassified by the department as eligible to receive delivery of product, the owner or operator shall provide a written statement of compliance to the department and the inspector listed in the notice that the conditions listed in the notice of intent to red tag have been corrected. The written statement shall contain the date, owner or operator's name, how the conditions have been corrected, by whom, and the date of correction.

B. Department confirmation. The department shall, in its sole discretion, determine whether the conditions listed in the notice of intent to red tag have been corrected as soon as practicable but within no more than three business days after receipt of the owner's written statement of compliance. If the conditions have not been corrected, the department shall notify the owner or operator in the manner prescribed by 20.5.116.1606 NMAC.

C. Removal of red tag and notice of ineligibility. Upon verification of compliance, department personnel shall:

(1) immediately remove each red tag and certificate at the facility, and document the level of product in each tank; and

(2) as soon as practicable, but in no event longer than three business days, remove the facility from the department's website list of facilities that contain storage tanks which are ineligible for delivery.

[20.5.116.1607 NMAC - N,
07/24/2018]

[The department provides an optional form for compliance with Subsection A. The form is available on the petroleum storage tank bureau's pages on the department's website or by contacting the Petroleum Storage

Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.116.1608 DELIVERY PROHIBITION DEFERRAL IN RURAL AND REMOTE AREA AND FOR MATTERS OF NATIONAL SECURITY:

The department shall defer classifying a storage tank or facility as ineligible for delivery, deposit or acceptance of product if such classification would jeopardize the availability of, or access to, motor fuel in a rural and remote area as defined in 20.5.101.7 NMAC, or where the United States department of defense operates a storage tank and notifies the department that continued operation of the tank is a matter of national security. The department may only defer application of delivery prohibition for up to 180 days from the date of the issuance of the notice of intent to red tag pursuant to Subsection A of 20.5.116.1602 NMAC or Paragraph (3) of Subsection B of 20.5.116.1602 NMAC.

[20.5.116.1608 NMAC - N, 07/24/2018]

20.5.116.1609 DELIVERY AUTHORIZATION IN EMERGENCY SITUATIONS OR FOR TANK TESTING:

A. Emergency situations. The department may authorize delivery or deposit of product to an emergency generator tank that is otherwise ineligible for delivery or deposit if the owner or operator can demonstrate to the satisfaction of the department that:

- (1) a commercial power failure or other declared state of emergency exists; and
- (2) the emergency generator tank:
 - (a) provides power supply;
 - (b) stores petroleum; and
 - (c) is used solely in connection with an emergency system, legally required

standby system or optional standby system.

B. Tank testing. The department may authorize delivery or deposit of product to a storage tank that is otherwise ineligible for delivery or deposit if the owner or operator can demonstrate to the satisfaction of the department that delivery or deposit is necessary to test or calibrate a tank.

[20.5.116.1609 NMAC - N, 07/24/2018]

20.5.116.1610 ADDITIONAL REQUIREMENTS:

A. Storage tank equipment tampering prohibited. It shall be unlawful for any person, including product deliverers, to remove, tamper with, destroy, damage or disable storage tank equipment, including but not limited to release detection and other safety mechanisms, in the course of delivery of any product.

B. Compliance with rules. A product deliverer shall be responsible for ensuring that all deliveries are made in compliance with 20.5 NMAC.

[20.5.116.1610 NMAC - N, 07/24/2018]

20.5.116.1611 ADMINISTRATIVE APPEALS:

Any owner or operator of a facility that contains storage tanks to which the department has affixed a red tag prohibiting delivery pursuant to this part may appeal to the secretary by submitting a written request for hearing.

A. Timelines. The request must be made in writing to the secretary by the owner or operator within five business days after the notice of red tag placement has been issued or the decision of the department shall be final. If an appeal is received within the five-business day time limit, the secretary shall hold a hearing within seven business days after receipt of the request, unless the parties agree to an alternate timeframe. The secretary shall notify the person who requested the hearing of the date, time and place of the

hearing by certified mail.

B. Burden of proof. In the appeal hearing, the burden of proof is on the person who requested the hearing.

C. Procedures. **(1)**

Appeal hearings shall be held at a place designated by the secretary, unless other mutually agreed upon arrangements are made. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

(2) The department shall make an audio recording of the hearing. If either party wants the hearing transcribed, that party shall bear the costs of transcription.

(3) In appeal hearings, the rules governing civil procedure and evidence in district court shall not apply. Hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary shall decide and announce if the hearing record will remain open, for how long, and for what reason it will be left open.

D. Secretary's decision. Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within seven business days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice.

E. No stay of action. The filing of an administrative appeal

shall not stay any action, compliance or corrective action required by the red tag issued by the department.

F. Judicial review.

Judicial review of the secretary's final order shall be as provided by law. The filing of a judicial appeal shall not stay any action, compliance or corrective action required by the secretary's decision.

[20.5.116.1611 NMAC - N, 07/24/2018]

HISTORY of 20.5.116 NMAC:

Pre-NMAC History: none

History of Repealed Material:

20.5.19 NMAC, Petroleum Storage Tanks, Delivery Prohibition (filed 3/17/12), repealed 7/24/18.

Other History:

20.5.19 NMAC, Petroleum Storage Tanks, Delivery Prohibition (filed 3/17/12), was renumbered, reformatted, and replaced by 20.5.116 NMAC, Petroleum Storage Tanks, Delivery Prohibition, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 117 FINANCIAL
RESPONSIBILITY**

20.5.117.1 ISSUING

AGENCY: New Mexico Environmental Improvement Board.
[20.5.117.1 NMAC - N, 07/24/2018]

20.5.117.2 SCOPE: This part applies to owners and operators of petroleum storage tanks as defined in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with

capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC. If the owner and operator are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

[20.5.117.2 NMAC - N, 07/24/2018]

20.5.117.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-15 NMSA 1978.

[20.5.117.3 NMAC - N, 07/24/2018]

20.5.117.4 DURATION:

Permanent.

[20.5.117.4 NMAC - N, 07/24/2018]

20.5.117.5 EFFECTIVE

DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.117.5 NMAC - N, 07/24/2018]

20.5.117.6 OBJECTIVE:

The purpose of this part is to require owners and operators of petroleum storage tanks systems to demonstrate financial responsibility for their systems and to protect the public health, safety and welfare and the environment of the state.

[20.5.117.6 NMAC - N, 07/24/2018]

20.5.117.7 DEFINITIONS:

The definitions in 20.5.101 NMAC apply to this part.

[20.5.117.7 NMAC - N, 07/24/2018]

**20.5.117.8 to 20.5.17.1699
[RESERVED]**

20.5.117.1700 APPLICABILITY:

A. This part applies to owners and operators of all petroleum storage tank systems except as otherwise provided in this section.

B. Owners and operators of petroleum above ground

storage tank systems are subject to these requirements in accordance with 20.5.117.1701 NMAC.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this part.

D. The requirements of this part do not apply to owners and operators of storage tank systems described in Subsection B or D of 20.5.101.2 NMAC.

E. If the owner and operator of a petroleum storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

[20.5.117.1700 NMAC - N, 07/24/2018]

20.5.117.1701 PHASE-IN FOR ABOVE GROUND STORAGE TANKS:

Owners and operators of above ground storage tanks shall comply with the requirements of 20.5.117 NMAC by July 1, 2007.

[20.5.117.1701 NMAC - N, 07/24/2018]

20.5.117.1702 [RESERVED]

20.5.117.1703 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY:

A. Owners and operators of petroleum storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum storage tanks in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year, \$1,000,000; and

(2) For all other owners or operators of

petroleum storage tanks, \$500,000.

B. Owners and operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

- (1) for owners or operators of one to 100 petroleum underground storage tanks, \$1,000,000; and
- (2) for owners or operators of 101 or more petroleum underground storage tanks, \$2,000,000.

C. Owners and operators of petroleum above ground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum above ground storage tanks in at least the following annual aggregate amounts:

- (1) for owners or operators of one to 100 petroleum above ground storage tanks, \$1,000,000; and
- (2) for owners or operators of 101 or more petroleum above ground storage tanks, \$2,000,000.

The annual aggregate on above ground storage tanks is separate from the annual aggregate on underground storage tanks, although an owner or operator of both above ground and underground storage tanks may include both types of tanks within the same annual aggregate if the aggregate is no less than the total of the annual aggregates required for each type of tank.

D. For the purposes of Subsections B, C and G of this section only, “a petroleum underground storage tank” or “a petroleum above ground storage tank” means a single containment unit and does not mean combinations of single containment units.

E. Except as provided in Subsection F of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

- (1) taking corrective action;
- (2) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
- (3) compensating third parties for bodily injury and property damage caused by non-sudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in Subsections A, B and C of this section.

F. If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanism.

G. Owners and operators shall review the amount of aggregate assurance provided whenever additional petroleum storage tanks are acquired or installed. If the number of either petroleum underground storage tanks or petroleum above ground storage tanks for which assurance shall be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance for that particular type of tank (UST or AST) by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, owner and operators shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

H. The amounts of assurance required under this section exclude legal defense costs.

I. The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

[20.5.117.1703 NMAC - N, 07/24/2018]

20.5.117.1704 ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS:

A. Subject to the limitations of Subsections B and C and the requirements of Subsection D of this section:

(1) an owner or operator may use any one or combination of the mechanisms listed in 20.5.117.1705 NMAC through 20.5.117.1713 NMAC to demonstrate financial responsibility under this part for one or more storage tanks; and

(2) a local government owner or operator may use any one or combination of the mechanisms listed in 20.5.117.1705 NMAC through 20.5.117.1717 NMAC to demonstrate financial responsibility under this part for one or more storage tanks.

B. An owner or operator may use a guarantee or surety bond under 20.5.117.1708 NMAC to establish financial responsibility only if the attorney general of the state has submitted a written statement to the department that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in this state. The department received this statement on July 24, 1988.

C. An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

D. An owner or operator who intend to use one

mechanism or a combination of mechanisms for tanks in more than one state may use the federal forms found in 40 CFR Part 280. If an owner or operator uses the federal forms, the owner or operator shall attach the following addendum: It is hereby acknowledged and agreed that, with respect to the storage tanks located in New Mexico, any and all references to Subtitle I of the federal Resource Conservation and Recovery Act or to one or more of the regulations of the United States environmental protection agency promulgated under Subtitle I and included in 40 CFR Part 280 are deemed references to the New Mexico Hazardous Waste Act and the applicable provisions of 20.5 NMAC, the New Mexico petroleum storage tank regulations.
[20.5.117.1704 NMAC - N, 07/24/2018]

20.5.117.1705 FINANCIAL TEST OF SELF INSURANCE:

A. An owner or operator, or guarantor, may satisfy the requirements of 20.5.117.1703 NMAC by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, or guarantor, shall meet the criteria of Subsection B or C of this section based on year-end financial statements for the latest completed fiscal year.

B. Criteria for option one.

(1) The owner or operator, or guarantor, shall have a tangible net worth of at least 10 times:

(a) the total of the applicable aggregate amounts required by 20.5.117.1703 NMAC based on the number of storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this section;

(b) the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to

EPA under 40 CFR 264.101, Sections 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and

(c) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Sections 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

(2) The owner or operator, or guarantor, shall have a tangible net worth of at least \$10,000,000.

(3) The owner or operator, or guarantor, shall have a letter signed by the chief financial officer worded as specified in 20.5.117.1755 NMAC.

(4) The owner or operator, or guarantor, shall either:

(a) file financial statements annually with the United States securities and exchange commission, the energy information administration, or the rural utilities service; or

(b) report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A.

(5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

C. Criteria for option two.

(1) The owner or operator, or guarantor, shall meet the financial test requirements of 40 CFR Section 264.147(f)(1), substituting the appropriate amounts specified in Paragraphs (1) and (2) of Subsection B of 20.5.117.1703 NMAC for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the

owner or operator, or guarantor, shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(4) The owner or operator, or guarantor, shall have a letter signed by the chief financial officer, worded as specified in 20.5.117.1755 NMAC.

(5) If the financial statements of the owner or operator, or guarantor, are not submitted annually to the United States securities and exchange commission, the energy information administration or the rural utilities service, the owner or operator, or guarantor, shall obtain a special report by an independent certified public accountant stating that:

(a) the accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, or guarantor, with the amounts in such financial statements; and

(b) in connection with that comparison, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

D. To demonstrate that it meets the financial test under Subsection B or C of this section, the chief financial officer of the owner or operator, or guarantor, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as shown in 20.5.117.1755 NMAC.

E. If owners or operators using the test to provide financial assurance finds that they no longer meet the requirements of the financial test based on the year-

end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

F. The secretary may require reports of financial condition at any time from the owner or operator, or guarantor. If the secretary finds, on the basis of such reports or other information, that the owner or operator, or guarantor, no longer meets the financial test requirements of Subsections B or C and D of 20.5.117.1705 NMAC, the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

G. If owners or operators fail to obtain alternate assurance within 150 days of finding that they no longer meet the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the secretary that they no longer meet the requirements of the financial test, the owner or operator shall notify the secretary of such failure within 10 days. [20.5.117.1705 NMAC - N, 07/24/2018]

20.5.117.1706 GUARANTEE:

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

- (1) a firm that:
- (a) possesses a controlling interest in the owner or operator;
- (b) possesses a controlling interest in a firm described under Subparagraph (a) of Paragraph (1) of Subsection A of this section; or
- (c) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

(2) a firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee

as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year the guarantor shall demonstrate that it meets the financial test criteria of 20.5.117.1705 NMAC based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in 20.5.117.1755 NMAC and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. If the secretary notifies the guarantor that he no longer meets the requirements of the financial test of Subsection B or C of 20.5.117.1705 NMAC and 20.5.117.1755 NMAC, the guarantor shall notify the owner or operator within 10 days of receiving such notification from the secretary. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in Subsection E of 20.5.117.1724 NMAC.

C. The guarantee shall be worded as specified in 20.5.117.1756 NMAC.

D. An owner or operator who uses a guarantee to satisfy the requirements of 20.5.117.1703 NMAC shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the secretary under 20.5.117.1722 NMAC. This standby trust fund shall meet the requirements specified in 20.5.117.1713 NMAC.

[20.5.117.1706 NMAC - N, 07/24/2018]

20.5.117.1707 INSURANCE AND RISK RETENTION GROUP COVERAGE:

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

B. Each insurance policy shall be amended by an endorsement worded as specified in Subsection A of 20.5.117.1757 NMAC or evidenced by a certificate of insurance worded as specified in Subsection B of 20.5.117.1757 NMAC, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Each insurance policy shall be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[20.5.117.1707 NMAC - N, 07/24/2018]

20.5.117.1708 SURETY BOND:

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest *Circular 570* of the United States department of the treasury.

B. The surety bond shall be worded as specified in 20.5.117.1758 NMAC.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

D. The owner or

operator who uses a surety bond to satisfy the requirements of 20.5.117.1703 NMAC shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the secretary under 20.5.117.1722 NMAC. This standby trust fund shall meet the requirements specified in 20.5.117.1713 NMAC. [20.5.117.1708 NMAC - N, 07/24/2018]

20.5.117.1709 LETTER OF CREDIT:

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

B. The letter of credit shall be worded as specified in 20.5.117.1759 NMAC.

C. An owner or operator who uses a letter of credit to satisfy the requirements of 20.5.117.1703 NMAC shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the secretary will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the secretary under 20.5.117.1722 NMAC. This standby trust fund shall meet the requirements specified in 20.5.117.1713 NMAC.

D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its

decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

[20.5.117.1709 NMAC - N, 07/24/2018]

20.5.117.1710 USE OF STATE REQUIRED MECHANISM:

A. An owner or operator may use a state-required financial mechanism to meet the requirements of 20.5.117.1703 NMAC if the secretary determines that the state mechanism is at least equivalent to the financial mechanisms specified in this part.

B. The secretary will evaluate the equivalency of a state-required mechanism principally in terms of: certainty of the availability of funds for taking corrective action or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The secretary may also consider other factors as is necessary.

C. The state, an owner or operator, or any other interested party may submit to the secretary a written petition requesting that one or more of the state-required mechanisms be considered acceptable for meeting the requirements of 20.5.117.1703 NMAC. The submission shall include copies of the appropriate state statutory and regulatory requirements and shall show the amount of funds for corrective action or for compensating third parties assured by the mechanism(s). The secretary may require the petitioner to submit additional information as is deemed necessary to make this determination.

D. Any petition under this section may be submitted on behalf of all of the state's petroleum underground storage tank owners and operators, petroleum above ground storage tank owners and operators, or both petroleum underground and above ground storage tank owners and operators.

E. The secretary will notify the petitioner of the

determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this part. Pending this determination, the owners and operators using such mechanisms will be deemed to be in compliance with the requirements of 20.5.117.1703 NMAC for storage tanks located in the state for the amounts and types of costs covered by such mechanisms.

[20.5.117.1710 NMAC - N, 07/24/2018]

20.5.117.1711 STATE FUND OR OTHER STATE ASSURANCE:

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC for storage tanks located in New Mexico if the state assures that monies will be available from a state fund or state assurance program to cover costs up to the limits specified in 20.5.117.1703 NMAC or otherwise assures that such costs will be paid if the secretary determines that the state's assurance is at least equivalent to the financial mechanisms specified in this part.

B. The secretary will evaluate the equivalency of a state fund or other state assurance principally in terms of: certainty of the availability of funds for taking corrective action; the amount of funds that will be made available; and the types of costs covered. The secretary may also consider other factors as is necessary.

C. The secretary shall consider a description of the state fund or other state assurance to be supplied as financial assurance, along with a list of the classes of storage tanks to which the funds may be applied. The secretary may also consider additional information as is deemed necessary to make a determination regarding the acceptability of the state fund or other state assurance. Pending the determination by the secretary, the owner or operator of a covered class of storage tanks will be deemed to be in compliance with the requirements of 20.5.117.1703 NMAC for the amounts and types of costs covered

by the state fund or other state assurance.

D. Within 60 days after the secretary determines the state's fund or other assurance is acceptable in lieu of other financial mechanisms specified in 20.5.117 NMAC the secretary shall provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the state's assumption of responsibility. The letter or certificate from the secretary shall include, or have attached to it, the following information: the facility's name and address and the amount of funds for corrective action or for compensating third parties that is assured by the state. The owner or operator shall maintain this letter or certificate on file as proof of financial responsibility in accordance with Paragraph (8) of Subsection B of 20.5.117.1721 NMAC.

[20.5.117.1711 NMAC - N, 07/24/2018]

20.5.117.1712 TRUST FUND:

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by establishing a trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

B. The wording of the trust agreement shall be identical to the wording specified in 20.5.117.1763 NMAC with the addition of the addendum required by Subsection D of 20.5.117.1704 NMAC, and shall be accompanied by a formal certification of acknowledgment as specified in Subsection B of 20.5.117.1763 NMAC.

C. The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required

coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the secretary for release of the excess.

E. If other financial assurance as specified in this part is substituted for all or part of the trust fund, the owner or operator may submit a written request to the secretary for release of the excess.

F. Within 60 days after receiving a request from the owner or operator for release of funds as specified in Subsection D or E of this section, the secretary will instruct the trustee to release to the owner or operator such funds as the secretary specifies in writing.

[20.5.117.1712 NMAC - N, 07/24/2018]

20.5.117.1713 STANDBY TRUST FUND:

A. An owner or operator using any one of the mechanisms authorized by 20.5.117.1706, 1708, or 1709 NMAC shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

B. The standby trust agreement shall be worded as specified in 20.5.117.1763 NMAC.

C. The secretary will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the secretary determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

D. An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

[20.5.117.1713 NMAC - N, 07/24/2018]

20.5.117.1714 LOCAL GOVERNMENT BOND RATING TEST:

A. A general purpose local government owner or operator or local government serving as a guarantor, or a local government owner or operator or guarantor which is not a general purpose local government but which has the legal authority to issue general obligation bonds, may satisfy the requirements of 20.5.117.1703 NMAC by having a currently outstanding issue or issues of general obligation bonds of \$1,000,000 or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

B. A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and also does not have the legal authority to issue general obligation bonds may satisfy the requirements of 20.5.117.1703 NMAC by having both a currently outstanding issue or issues of revenue bonds of \$1,000,000 or more, excluding refunded issues, and a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard and Poor's, the lower rating for each bond shall be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

C. The local

government owner or operator or guarantor shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

D. To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator or guarantor described in Subsection A of this section shall sign a letter worded exactly as specified in Subsection A of 20.5.117.1764 NMAC.

E. To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator or guarantor described in Subsection B of this section shall sign a letter worded exactly as specified in Subsection B of 20.5.117.1764 NMAC.

F. The secretary may require reports of financial condition at any time from the local government owner or operator, or local government guarantor. If the secretary finds, on the basis of such reports or other information, that the local government owner or operator, or guarantor, no longer meets the local government bond rating test requirements of this section, the local government owner or operator shall obtain alternative coverage within 30 days after notification of such a finding.

G. If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator shall obtain alternative coverage within 150 days of the change in status.

H. If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the bond rating test or within 30 days of notification by the director of the implementing agency that it no longer meets the requirements of the bond rating test, the owner or operator must notify the director of such failure within 10

days.

[20.5.117.1714 NMAC - N, 07/24/2018]

20.5.117.1715 LOCAL GOVERNMENT FINANCIAL TEST:

A. A local government owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator shall meet the criteria of Paragraphs (2) and (3) of Subsection B of this section based on year-end financial statements for the latest completed fiscal year.

B. The criteria for local government financial test.

(1) The local government owner or operator shall have the following information available, as shown in the year-end financial statements for the latest completed fiscal year.

(a) Total revenues. "Total revenues" is the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(b) Total expenditures. "Total expenditures" is the sum of general fund operating and non-operating

expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

(c) Local revenues. "Local revenues" is total revenues as defined in Subparagraph (a) of Paragraph (1) of Subsection B of this section minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.

(d) Debt service. "Debt service" is the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. It includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. It excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(e) Total funds. "Total funds" is the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. It includes federal securities, federal agency securities, state and local government securities, and other

securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(f)

Population is the number of people in the area served by the local government.

(2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator shall have a letter signed by the chief financial officer worded as specified in Subsection C of this section and 20.5.117.1765 NMAC.

C. To demonstrate that it meets the financial test under Subsection B of this section, the chief financial officer of the local government owner or operator, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as specified in 20.5.117.1765 NMAC.

D. If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

E. The secretary may require reports of financial condition at any time from the local government owner or operator. If the secretary finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of Subsections B and C

of this section, the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

F. If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the secretary that it no longer meets the requirements of the financial test, the owner or operator shall notify the secretary of such failure within 10 days. [20.5.117.1715 NMAC - N, 07/24/2018]

20.5.117.1716 LOCAL GOVERNMENT GUARANTEE:

A. A local government owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be either the state or a local government having a "substantial governmental relationship" with the owner and operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor shall do one of the following:

(1) demonstrate that it meets the bond rating test requirement of 20.5.117.1714 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.117.1764 NMAC to the local government owner or operator;

(2) demonstrate that it meets the worksheet test requirements of 20.5.117.1715 and 20.5.17.1765 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.117.1765 NMAC to the local government owner or operator; or

(3) demonstrate that it meets the local government fund requirements of Subsection A, B or C of 20.5.117.1717 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.117.1767

NMAC to the local government owner or operator.

B. If the local government guarantor is unable to demonstrate financial assurance under any provision of 20.5.117.1714 or 20.5.117.1715 NMAC or Subsection A, B, or C of 20.5.117.1717 NMAC at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in Subsection E of 20.5.117.1724 NMAC.

C. The guarantee agreement shall be worded as specified in Subsection A or B of 20.5.117.1766 NMAC, depending on which of the following alternative guarantee arrangements is selected.

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the secretary, the guarantee shall be worded as specified in Subsection A of 20.5.117.1766 NMAC.

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the secretary for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in Subsection B of 20.5.117.1766 NMAC.

D. If the guarantor is the state, the local government guarantee with standby trust shall be worded as specified in Paragraph (1) of Subsection A of 20.5.117.1766 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee with standby trust shall be worded as specified in Paragraph (2) of Subsection A of 20.5.117.1766 NMAC except that instructions in brackets are to be replaced with

relevant information and the brackets deleted.

E. If the guarantor is the state, the local government guarantee without standby trust shall be worded as specified in Paragraph (1) of Subsection B of 20.5.117.1766 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee without standby trust shall be worded as specified in Paragraph (2) of Subsection B of 20.5.117.1766 NMAC, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

[20.5.117.1716 NMAC - N, 07/24/2018]

20.5.117.1717 LOCAL GOVERNMENT FUND: A local government owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in Subsection B of this section, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets the requirements in either Subsection A, B or C of this section.

A. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both and is funded for the full amount of coverage required under 20.5.117.1703 NMAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage.

B. The fund is dedicated by state constitutional

provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both and is funded for five times the full amount of coverage required under 20.5.117.1703 NMAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under 20.5.117.1703 NMAC, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund.

C. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven-year period is hereafter referred to as the "pay-in-period." The amount of each payment shall be determined by this formula: $(TF - CF)/Y$, where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and

(1) the local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage

caused by accidental releases arising from the operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both; or

(2) the local government owner or operator has a letter signed by the state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter shall also state that prior voter approval is not necessary before use of the bonding authority.

D. To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator or guarantor shall sign a letter worded exactly as specified in 20.5.117.1767 NMAC.

[20.5.117.1717 NMAC - N, 07/24/2018]

20.5.117.1718 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS BY OWNER OR OPERATOR:

A. Owners and operators may substitute any alternate financial assurance mechanisms as specified in this part, provided that at all times they maintain an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of 20.5.117.1703 NMAC.

B. After obtaining alternate financial assurance as specified in this part, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

[20.5.117.1718 NMAC - N, 07/24/2018]

20.5.117.1719 CANCELLATION OR NON-RENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE:

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail

to the owner or operator.

(1)

Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2)

Termination of insurance or risk retention group coverage, except for non-payment or misrepresentation by the insured, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

B. If a provider of

financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 20.5.117.1724 NMAC, the owner or operator shall obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall notify the secretary of such failure and submit:

(1) the

name and address of the provider of financial assurance;

(2) the

effective date of termination; and

(3) the

evidence of the financial assurance mechanism subject to the termination maintained in accordance with Subsection B of 20.5.117.1721 NMAC.

[20.5.117.1719 NMAC - N, 07/24/2018]

20.5.117.1720 REPORTING BY OWNER OR OPERATOR:

A. Owners and

operators shall submit the appropriate forms listed in Subsection B of

20.5.117.1721 NMAC documenting current evidence of financial responsibility to the secretary:

(1) within

30 days after the owner or operator identifies a release from a storage tank required to be reported under 20.5.102.204 NMAC or 20.5.118 NMAC;

(2) if the

owner or operator fails to obtain alternate coverage as required by this part, within 30 days after the owner or operator receives notice of:

(a)

commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a provider of financial assurance as a debtor,

(b)

suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(c)

failure of a guarantor to meet the requirements of the financial test, or

(d)

other incapacity of a provider of financial assurance, except as provided in Paragraph (3) of this subsection;

(3) if the

owner or operator fails to obtain alternate coverage as required by this part, within 60 days after the owner or operator receives notice that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs; or

(4) as required

by Subsection G of 20.5.117.1705 NMAC and Subsection B of 20.5.117.1719 NMAC.

B. Owners and

operators shall certify compliance with the financial responsibility requirements of this part as specified in the new tank registration form when registering a new storage tank under 20.5.102.202 NMAC.

C. The secretary

may require an owner or operator to submit evidence of financial assurance as described in Subsection B of 20.5.117.1721 NMAC or other

information relevant to compliance with this part at any time.

[20.5.117.1720 NMAC - N, 07/24/2018]

20.5.117.1721 RECORD KEEPING:

A. Owners and

operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this part for a storage tank until released from the requirements of this part under 20.5.117.1723 NMAC. An owner or operator shall maintain such evidence at the storage tank site or the owner's or operator's place of business. Records maintained off-site shall be made available upon request of the department.

B. Owners and

operators shall maintain the following types of evidence of financial responsibility:

(1) An owner

or operator using an assurance mechanism specified in 20.5.117.1705 NMAC through 20.5.117.1710 NMAC or 20.5.117.1712 NMAC or 20.5.117.1714 through 20.5.117.1717 NMAC shall maintain a copy of the instrument worded as specified in this part.

(2) An owner

or operator using a financial test or guarantee, a local government financial test a local government guarantee supported by the local government financial test shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

(3) An owner

or operator using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local

government owner or operator using a local government guarantee under Subsection D of 20.5.117.1716 NMAC shall maintain a copy of the

signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test under 20.5.117.1714 NMAC shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

(6) A local government owner or operator using the local government guarantee under 20.5.117.1716 NMAC, where the guarantor's demonstration of financial responsibility relies on the bond rating test under 20.5.117.1714 NMAC shall maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.

(7) An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An owner or operator covered by a state fund or other state assurance shall maintain on file a copy of any evidence of coverage supplied by or required by the state under Subsection D of 20.5.117.1711 NMAC.

(9) An owner or operator using a local government fund under 20.5.117.1717 NMAC shall maintain the following documents:

(a) a copy of the state constitutional provision or local government statute charter, ordinance, or order dedicating the fund, and

(b) year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under Subsection A of 20.5.117.1717 NMAC using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance the amount of funding during the year, and the

closing balance in the fund.

(c) If the fund is established under Subsection A of 20.5.117.1717 NMAC using incremental funding backed by bonding authority, the owner or operator shall also maintain documentation of the required bonding authority, including either the results of a voter referendum under Paragraph (1) of Subsection C of 20.5.117.1717 NMAC or attestation by the state attorney general as specified under Paragraph (2) of Subsection C of 20.5.117.1717 NMAC.

(10) A local government owner or operator using the local government guarantee supported by the local government fund shall maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

(11) Owners and operators using an assurance mechanism specified in 20.5.117.1705 through 20.5.117.1717 NMAC shall maintain an updated copy of a certification of financial responsibility worded as specified in 20.5.117.1771 NMAC. The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s). [20.5.117.1721 NMAC - N, 07/24/2018]

20.5.117.1722 DRAWING ON FINANCIAL ASSURANCE MECHANISMS:

A. The secretary shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the secretary, up to the limit of funds provided by the financial assurance mechanism, into the standby trust under certain conditions:

(1) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

the secretary determines or suspects that a release from a storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the secretary pursuant to 20.5.102 or 20.5.118 NMAC of a release from a storage tank covered by the mechanism; or

(2) The conditions of Paragraph (1) or Paragraph (2) of Subsection B of this section are satisfied.

B. The secretary may draw on a standby trust fund when:

(1) the secretary makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under 20.5.119 NMAC; or

(2) the secretary has received one of the following:

(a) certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid, worded as specified in 20.5.117.1772 NMAC; or

(b) a valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from a storage tank covered by financial assurance under this part and the secretary determines that the owner or operator has not satisfied the judgment.

C. If the secretary determines that the amount of corrective action costs and third-party liability claims eligible for payment under Subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the

environment. The secretary shall pay third-party liability claims in the order in which the secretary receives certifications under Subparagraph (a) of Paragraph (2) and valid court orders under Subparagraph (b) of Paragraph (2) of Subsection B of this section.

D. A governmental entity acting as guarantor under Subsection E of 20.5.117.1716 NMAC shall make payments as directed by the secretary under the circumstances described in Subsections A, B and C of this section.

[20.5.117.1722 NMAC - N, 07/24/2018]

20.5.117.1723 RELEASE FROM THE REQUIREMENTS: An owner or operator is no longer required to maintain financial responsibility under this part for a storage tank after the tank has been permanently closed or undergoes a change in service or, if corrective action is required, after corrective action has been completed and the tank has been permanently closed or undergoes a change in service as required by 20.5.115 NMAC.

[20.5.117.1723 NMAC - N, 07/24/2018]

20.5.117.1724 BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE:

A. Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming an owner or operator as debtor, the owner or operator shall notify the secretary by certified mail of such commencement and submit the appropriate forms listed in Subsection B of 20.5.117.1721 NMAC documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement

as required under the terms of the guarantee specified in 20.5.117.1706 NMAC.

C. Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a local government owner or operator as debtor, the local government owner or operator shall notify the secretary by certified mail of such commencement and submit the appropriate forms listed in Subsection B of 20.5.117.1721 NMAC documenting current financial responsibility.

D. Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in 20.5.117.1716 NMAC.

E. An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator shall obtain alternate financial assurance as specified in this part within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he shall notify the secretary.

F. Within 60 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator shall obtain alternate financial assurance.

[20.5.117.1724 NMAC - N, 07/24/2018]

20.5.117.1725

REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS:

A. If at any time after a standby trust is funded upon the instruction of the secretary with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) replenish the value of financial assurance to equal the full amount of coverage required; or

(2) acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 20.5.117.1703 NMAC. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

[20.5.117.1725 NMAC - N, 07/24/2018]

20.5.117.1726 to 20.5.117.1754 [RESERVED]

20.5.117.1755 FORM DOCUMENTS FOR FINANCIAL TEST OF SELF INSURANCE:

To demonstrate that it meets the financial test under Subsection B or C of 20.5.117.1705 NMAC, the chief financial officer of the owner or operator, or guarantor, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: “the financial test of self-insurance,” or “guarantee”] to demonstrate financial responsibility for [insert: “taking corrective action” and/ or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC. If this financial test is used to assure both underground and above ground storage tanks, identify each tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC.]

A [insert: “financial test,” and/or “guarantee”] is also used by this [insert: “owner or operator,” or aggregate arising from operating (an) underground storage tank(s) and at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this financial test by this [insert: “owner or operator,” and/or “guarantor”]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or another financial test under 20.5.117 New Mexico Administrative Code (NMAC). If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each

“guarantor”] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations	Amount
Closure (264.143 and 265.143)	\$ _____
Post-Closure Care (264.145 and 265.145)	\$ _____
Liability Coverage (264.147 and 265.147)	\$ _____
Corrective Action (264.101(b))	\$ _____
Plugging and Abandonment (144.63)	\$ _____
Closure	\$ _____
Post-Closure Care	\$ _____
Liability Coverage	\$ _____
Corrective Action	\$ _____
Plugging and Abandonment	\$ _____
Total	\$ _____

This [insert: “owner or operator,” or “guarantor”] has not received an adverse opinion, a disclaimer of opinion, or a “going concern” qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of Subsection B of 20.5.117.1705 NMAC are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of Subsection C of 20.5.117.1705 NMAC are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1. Amount of annual aggregate coverage for storage tanks being assured by a financial test, and/or guarantee \$ _____
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee \$ _____
3. Sum of lines 1 and 2 \$ _____
4. Total tangible assets \$ _____
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$ _____
6. Tangible net worth [subtract line 5 from line 4] \$ _____
7. Is line 6 at least \$10,000,000? Yes No

- 8. Is line 6 at least 10 times line 3? ___ ___
- 9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? ___ ___
- 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? ___ ___
- 11. Have financial statements for the latest fiscal year been filed with the Rural Utilities Service? ___ ___
- 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] ___ ___

Alternative II

- 1. Amount of annual aggregate coverage for storage tanks being assured by a financial test, and/or guarantee \$ _____
- 2. Amount of corrective action, closure and post-closure care costs, liability cover-age, and plugging and abandonment costs covered by a financial test, and/or guarantee \$ _____
- 3. Sum of lines 1 and 2 \$ _____
- 4. Total tangible assets \$ _____
- 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$ _____
- 6. Tangible net worth [subtract line 5 from line 4] \$ _____
- 7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] \$ _____

Yes No

- 8. Is line 6 at least \$10,000,000? ___ ___
- 9. Is line 6 at least 6 times line 3? ___ ___
- 10. Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.] ___ ___
- 11. Is line 7 at least 6 times line 3? ___ ___

[Fill in either lines 12-15 or lines 16-18:]

- 12. Current assets \$ _____
- 13. Current liabilities \$ _____
- 14. Net working capital [subtract line 13 from line 12] \$ _____

Yes No

- 15. Is line 14 at least 6 times line 3? ___ ___
- 16. Current bond rating of most recent bond issue ___ ___
- 17. Name of rating service _____
- 18. Date of maturity of bond _____

Yes No

- 19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Utilities Service? ___ ___
 [If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

For both Alternative I and Alternative II complete the certification with this statement:

I hereby certify that the wording of this letter is identical to the wording specified in

20.5.117.1755 NMAC as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

20.5.117.1756 FORM DOCUMENT FOR GUARANTEE: The guarantee shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the New Mexico Environment Department and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals

(1) Guarantor meets or exceeds the financial test criteria of Subsection B, C or D of 20.5.117.1705 New Mexico Administrative Code (NMAC) and agrees to comply with the requirements for guarantors as specified in Subsection B of 20.5.117.1706 NMAC.

(2) [Owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies 20.5.117.1703 NMAC requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases" [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate and at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating the above-identified above ground storage tank(s).

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the secretary has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the guarantor, upon instructions from the secretary of the Environment Department, shall fund a standby trust fund in accordance with the provisions of 20.5.117.1713 NMAC, in an amount not to exceed the coverage limits specified above.

In the event that the secretary determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the guarantor upon written instructions from the secretary shall fund a standby trust in accordance with the provisions of 20.5.117.1713 NMAC in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "non-sudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the secretary, shall fund a standby trust in accordance with the provisions of 20.5.117.1713 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of Subsections B, C and D of 20.5.117.1705 NMAC, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding the Bankruptcy Code, 11 U.S.C., naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC, the New Mexico Petroleum Storage Tank Regulations.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.119 NMAC for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 20.5.117.1756 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[20.5.117.1756 NMAC - N, 07/24/2018]

20.5.117.1757 FORM DOCUMENTS FOR INSURANCE AND RISK RETENTION GROUP COVERAGE: To use insurance to satisfy requirements of 20.5.117.1703 NMAC, as described in 20.5.117.1707 NMAC, each insurance policy shall be amended by an endorsement worded as specified in Subsection A of this section or evidenced by a certificate of insurance worded as specified in Subsection B of this section, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

A. Required wording for endorsement.

ENDORSEMENT

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.]

For [insert: "taking corrective action" and/or "compensating third parties for bodily injury and

property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental release”; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s or Group’s liability; if the amount of coverage is different for different types of coverage or for different storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with Subsections a through e of this Paragraph 2 are hereby amended to conform with Subsections a through e:

a. Bankruptcy or insolvency of the insured shall not relieve the [“Insurer” or “Group”] of its obligations under the policy to which this endorsement is attached.

b. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 20.5.117.1705 through 20.5.117.1712 NMAC and 20.5.117.1714 NMAC through 20.5.117.1717 NMAC.

c. Whenever requested by the Secretary of the Environment Department, [“Insurer” or “Group”] agrees to furnish to the Secretary a signed duplicate original of the policy and endorsements.

d. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the [“Insurer” or “Group”] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Paragraph (1) of Subsection A of 20.5.117.1757 NMAC and that the [“Insurer” or “Group”] is [“licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states”].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

B. Required wording for certificate of insurance.

CERTIFICATION

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:
 Address of Insured:
 Certification

1. [Name of Insurer or Risk Retention Group], [the “Insurer” or “Group”], as identified above, hereby certifies that it has issued liability insurance covering the following storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as above ground or underground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.]

For [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”]; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s or Group’s liability; if the amount of coverage is different for different types of coverage or for different storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The [“Insurer” or “Group”] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the [“Insurer” or “Group”] of its obligations under the policy to which this certificate applies.

b. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 20.5.117.1705 through 20.5.117.1712 NMAC and 20.5.117.1714 NMAC through 20.5.117.1717 NMAC.

c. Whenever requested by the Secretary of the Environment Department, the [“Insurer” or “Group”] agrees to furnish to the Secretary a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the [“Insurer” or “Group”] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Subsection B of 20.5.117.1757 NMAC and that the [“Insurer” or “Group”] is [“licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states”].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Type name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

[20.5.117.1757 NMAC - N, 07/24/2018]

20.5.117.1758 FORM DOCUMENT FOR SURETY BOND: To satisfy the requirements of 20.5.117.1708 NMAC, the surety bond shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases" "arising from operating the storage tank"].

Penal sums of bond:

Per occurrence \$ _____

Annual aggregate \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the New Mexico Environment Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the federal Solid Waste Disposal Act, as amended, and the New Mexico Hazardous Waste Act, as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with 20.5.119 NMAC and the instructions of the Secretary of the New Mexico Environment Department for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 20.5.117 NMAC, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Secretary that the Principal has failed to [“take corrective action, in accordance with 20.5.119 NMAC and the Secretary’s instructions,” and/or “compensate injured third parties”] as guaranteed by this bond, the Surety(ies) shall either perform [“corrective action in accordance with 20.5.119 NMAC and the Secretary’s instructions,” and/or “third-party liability compensation”] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Secretary under 20.5.117.1713 NMAC.

Upon notification by the Secretary that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Secretary has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Secretary under 20.5.117.1713 NMAC.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 20.5.117.1758 NMAC, as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of Incorporation:

Liability limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

[20.5.117.1758 NMAC - N, 07/24/2018]

20.5.117.1759 FORM DOCUMENT FOR LETTER OF CREDIT: To satisfy the requirements of 20.5.117.1709 NMAC, the letter of credit shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of the Secretary of the New Mexico Environment Department]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of:

(1) your sight draft, bearing reference to this letter of credit, No. _____, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the federal Solid Waste Disposal Act, as amended, and the New Mexico Hazardous Waste Act, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/ or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate and the above ground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground and above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 20.5.117.1759 NMAC, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

[20.5.117.1759 NMAC - N, 07/24/2018

20.5.117.1760 to 20.5.117.1762 [RESERVED]

20.5.117.1763 FORM DOCUMENTS FOR STANDBY TRUST FUND: To satisfy the requirements of 20.5.117.1712 NMAC, the standby trust agreement shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee."

Whereas, the New Mexico Environmental Improvement Board, "EIB," has established certain regulations applicable to the Grantor, requiring that an owner or operator of a storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from the operation of the storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of [implementing agency]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Secretary of the New Mexico Environment Department's instructions are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Environment Department.

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"]

The Trustee shall make payments from the Fund as the Secretary shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 New Mexico Administrative Code (NMAC).

The Trustee shall reimburse the Grantor, or other persons as specified by the Secretary, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Secretary specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the

deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in 20.5.117 NMAC.

Section 13. Instructions to the Trustee

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Secretary to the Trustee shall be in writing, signed by the Secretary, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Secretary hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Secretary, except as provided for herein.

Section 14. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Secretary if the Grantor ceases to exist.

Section 15. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Secretary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Secretary issued in accordance with this Agreement. The Trustee shall be

indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the state of New Mexico, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 20.5.117.1763 NMAC and Paragraph (1) of Subsection B of 20.5.117.1713 NMAC as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

B. The standby trust agreement, or trust agreement, shall be accompanied by a formal certification of acknowledgment similar to the following:

State of

County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

[20.5.117.1763 NMAC - N, 07/24/2018]

20.5.117.1764 FORM DOCUMENTS FOR LOCAL GOVERNMENT BOND RATING TEST:

A. To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator and/or guarantor described in Subsection A of 20.5.117.1714 NMAC shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency
[Moody's or Standard & Poor's]				

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in Subsection A of 20.5.117.1764 New Mexico Administrative Code (NMAC) as such regulations were constituted on the date shown immediately below.

[Signature]
 Name]
 [Title]
 [Date]

B. To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator and/or guarantor described in Subsection B of 20.5.117.1714 NMAC shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency
[Moody's or Standard & Poor's]				

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in Subsection B of 20.5.117.1764 New Mexico Administrative Code (NMAC) as such regulations were constituted on the date shown immediately below.

[Signature]
 [Name]
 [Title]
 Date]

20.5.117.1765 FORM DOCUMENT FOR LOCAL GOVERNMENT FINANCIAL TEST: To demonstrate that it meets the financial test under Subsection B of 20.5.117.1714 NMAC, the chief financial officer of the local government owner or operator, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

WORKSHEET FOR MUNICIPAL FINANCIAL TEST PART I: BASIC INFORMATION

1. Total Revenues

a. Revenues (dollars)

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars)

c. Total Revenues (dollars)

2. Total Expenditures

a. Expenditures (dollars)

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars)

c. Total Expenditures (dollars)

3. Local Revenues

a. Total Revenues (from 1c) (dollars)

b. Subtract total intergovernmental transfers (dollars)

c. Local Revenues (dollars)

4. Debt Service

a. Interest and fiscal charges (dollars)

b. Add debt retirement (dollars)

c. Total Debt Service (dollars)

5. Total Funds (dollars)

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (persons)

PART II: APPLICATION OF TEST

7. Total Revenues to Population

- a. Total Revenues (from 1c)
- b. Population (from 6)
- c. Divide 7a by 7b
- d. Subtract 417
- e. Divide by 5,212
- f. Multiply by 4.095

8. Total Expenses to Population

- a. Total Expenses (from 2c)
- b. Population (from 6)
- c. Divide 8a by 8b
- d. Subtract 524
- e. Divide by 5,401
- f. Multiply by 4.095

9. Local Revenues to Total Revenues

- a. Local Revenues (from 3c)
- b. Total Revenues (from 1c)
- c. Divide 9a by 9b
- d. Subtract .695
- e. Divide by .205
- f. Multiply by 2.840

10. Debt Service to Population

- a. Debt Service (from 4c)
- b. Population (from 6)
- c. Divide 10a by 10b
- d. Subtract 51
- e. Divide by 1,038
- f. Multiply by -1.866

11. Debt Service to Total Revenues

- a. Debt Service (from 4c)
- b. Total Revenues (from 1c)
- c. Divide 11a by 11b
- d. Subtract .068
- e. Divide by .259
- f. Multiply by -3.533

12. Total Revenues to Total Expenses

- a. Total Revenues (from 1c)
- b. Total Expenses (from 2c)
- c. Divide 12a by 12b
- d. Subtract .910
- e. Divide by .899
- f. Multiply by 3.458

13. Funds Balance to Total Revenues

- a. Total Funds (from 5)
- b. Total Revenues (from 1c)
- c. Divide 13a by 13b
- d. Subtract .891
- e. Divide by 9.156
- f. Multiply by 3.270

14. Funds Balance to Total Expenses

- a. Total Funds (from 5)
- b. Total Expenses (from 2c)
- c. Divide 14a by 14b
- d. Subtract .866
- e. Divide by 6.409
- f. Multiply by 3.270

15. Total Funds to Population
 - a. Total Funds (from 5)
 - b. Population (from 6)
 - c. Divide 15a by 15b
 - d. Subtract 270
 - e. Divide by 4,548
 - f. Multiply by 1.866

16. Add 7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 20.5.117.1765 NMAC, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

[20.5.117.1765 NMAC - N, 07/24/2018]

20.5.117.1766 FORM DOCUMENTS FOR LOCAL GOVERNMENT GUARANTEE:

A. Required form documents for guarantees with standby trusts.

(1) Local government guarantee with standby trust made by the state. The guarantee agreement shall be worded as follows:

GUARANTEE

Guarantee made this [date] by the State of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies the requirements of 20.5.117 NMAC for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC; in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "non-sudden"]

accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Secretary, shall fund a standby trust in accordance with the provisions of 20.5.117.1722 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(7) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (1) of Subsection A of 20.5.117.1766 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) Local government guarantee with standby trust made by a local government. The guarantee agreement shall be worded as follows:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 20.5.117.1714 New Mexico Administrative Code (NMAC), the local government financial test requirements of 20.5.117.1715 NMAC, or the local government fund under Subsection A, B or C of 20.5.117.1717 NMAC.]

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by

this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.117 NMAC for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC, in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “non-sudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Secretary, shall fund a standby trust in accordance with the provisions of 20.5.117.1722 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in Paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to the New Mexico Petroleum Storage Tank Regulations (20.5 NMAC).

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The Guarantor’s obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (2) of Subsection A of 20.5.117.1766 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

B. Required form documents for guarantees without standby trusts.

(1) Local government guarantee without standby trust made by the state. The guarantee agreement shall be worded as follows:

GUARANTEE

Guarantee made this [date] by the State of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.117 NMAC for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon written instructions from the Secretary shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "non-sudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Secretary, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or

involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(7) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (1) of Subsection B of 20.5.117.1766 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) Local government guarantee without standby trust made by a local government. The guarantee agreement shall be worded as follows:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 20.5.117.1714 New Mexico Administrative Code (NMAC), the local government financial test requirements of 20.5.117.1715 NMAC, the local government fund under of Subsections A, B and C of 20.5.117.1717 NMAC.]

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.117 NMAC for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or

“non-sudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon written instructions from the Secretary shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “non-sudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Secretary, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in Paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5.117 NMAC.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The Guarantor’s obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers’ compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (2) of Subsection B of 20.5.117.1766 NMAC as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[20.5.117.1766 NMAC - N, 07/24/2018]

20.5.117.1767 FORM DOCUMENT FOR LOCAL GOVERNMENT FUND: To demonstrate that it meets the requirements of the local government fund, as specified in 20.5.117.1717 NMAC, the chief financial officer of the local government owner or operator and/or guarantor shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating an underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this local government fund mechanism:

[List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under 20.5.117.1703 New Mexico Administrative Code (NMAC) or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for five times the full amount of coverage required under 20.5.117.1703 New Mexico Administrative Code (NMAC) or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in Fund (market value of fund of close of last fiscal year): _____

[If fund balance is incrementally funded as specified in Subsection C of 20.5.117.1717

NMAC, insert:

Amount added to fund in the most recently completed fiscal year:

Number of years remaining in the pay-in period:

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in 20.5.117.1767 NMAC, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

[20.5.117.1767 NMAC - N, 07/24/2018]

20.5.117.1768 to 20.5.117.1770 [RESERVED]

20.5.117.1771 FORM DOCUMENT FOR RECORD KEEPING:

A. An owner or operator using an assurance mechanism specified in 20.5.117.1705 through 20.5.117.1717 NMAC shall maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of 20.5.117 New Mexico Administrative Code (NMAC).

The financial assurance mechanism[s] used to demonstrate financial responsibility under 20.5.117 NMAC is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases.”]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

B. The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).
[20.5.117.1771 NMAC - N, 07/24/2018]

20.5.117.1772 FORM DOCUMENT FOR DRAWING ON FINANCIAL ASSURANCE MECHANISMS: The certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner’s or operator’s] storage tank should be paid in the amount of \$[insert: dollar amount].

[Signatures]

[Signatures]

Owner or Operator

Claimant(s)

Attorney for

Attorney(s) for

Owner or Operator

Claimant(s)

(Notary) Date

(Notary) Date]

[20.5.117.1772 NMAC - N, 07/24/2018]

HISTORY OF 20.5.117 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-9, Underground Storage Tank Regulations - Part IX - Financial Responsibility, filed 9/12/88.

EIB/USTR-9, Underground Storage Tank Regulations - Part IX - Financial Responsibility, filed 8/4/89.

EIB/USTR-9, Underground Storage Tank Regulations - Part IX - Financial Responsibility, filed 6/12/90.

History of Repealed Material: 20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility (filed 2/27/97) repealed 8/15/03.

20.5.9 NMAC, Underground Storage Tanks, Financial Responsibility (filed 8/15/03) repealed 7/24/18.

Other History:

EIB/USTR - 9, Underground Storage Tank Regulations - Part IX - Financial Responsibility, filed 6/12/90, renumbered, reformatted and replaced by 20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility, effective 11/5/95; 20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility, filed 10/06/95 replaced by 20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility, effective 4/1/97; 20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility, filed 2/27/97, was renumbered reformatted and replaced by 20.5.9 NMAC, Petroleum Storage Tanks, Financial Responsibility, effective 8/15/03. 20.5.9, Underground Storage Tanks, Financial Responsibility, filed 8/15/03, was renumbered, reformatted, and replaced by 20.5.117 NMAC, Petroleum Storage Tanks, Financial Responsibility, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

TITLE

**20 ENVIRONMENTAL PROTECTION
CHAPTER 5 PETROLEUM STORAGE TANKS
PART 118 REPORTING AND INVESTIGATION OF SUSPECTED AND CONFIRMED RELEASES**

20.5.118.1 ISSUING

AGENCY: New Mexico Environmental Improvement Board. [20.5.118.1 NMAC - N, 07/24/2018]

20.5.118.2 SCOPE:

This part applies to owners and operators of storage tanks as defined in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST

systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.1 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance. [20.5.118.2 NMAC - N, 07/24/2018]

20.5.118.3 STATUTORY AUTHORITY:

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14, NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17, NMSA 1978. [20.5.118.3 NMAC - N, 07/24/2018]

20.5.118.4 DURATION:

Permanent. [20.5.118.4 NMAC - N, 07/24/2018]

20.5.118.5 EFFECTIVE DATE:

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section. [20.5.118.5 NMAC - N, 07/24/2018]

20.5.118.6 OBJECTIVE:

The purpose of 20.5.118 NMAC is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state, and to ensure that suspected and confirmed releases from storage tank systems are promptly reported and investigated and that corrective action is promptly initiated. [20.5.118.6 NMAC - N, 07/24/2018]

20.5.118.7 DEFINITIONS:

The definitions in 20.5.101 NMAC apply to this part. [20.5.118.7 NMAC - N, 07/24/2018]

20.5.118.8 to 20.5.118.1799 [RESERVED]

20.5.118.1800 REPORTING OF SPILL OR RELEASE:

A. Owners, operators,

certified installers, certified junior installers, and testers shall give notice of any suspected or confirmed release from a storage tank system pursuant to 20.5.118.1801 or 20.5.118.1802 NMAC, or any spill or any other relevant emergency situation to the department by telephone within 24 hours. The owner, operator, certified installer, certified junior installer, or tester giving the notice shall provide the following items of information to the best of the owner's, operator's, certified installer's, certified junior installer's, or tester's knowledge:

(1) the name, address, and telephone number of the agent in charge of the site at which the storage tank system is located, as well as the name, address and telephone number of the owner and the operator of the storage tank system;

(2) the name, address, facility ID number, and owner ID number of the site at which the storage tank system is located, as listed on the tank registration certificate, and the location of the storage tank system on that site;

(3) the date, time, location and duration of the spill, release or suspected release;

(4) the source and cause of the spill, release or suspected release;

(5) the storage tank system description;

(6) a description of the spill, release or suspected release, including its chemical composition;

(7) the estimated volume of the spill, release or suspected release; and

(8) any actions taken to mitigate immediate damage from the spill, release or suspected release.

B. Owners and operators shall provide a seven-day report describing the spill, release or suspected release and any investigation or follow-up action to the department within seven days of the incident. The written report shall verify the prior oral notification as to each of the items of information listed in Subsection A of this section and

provide any appropriate amendments to the information contained in the prior oral notification.

C. The department shall determine whether a release is a confirmed release based on the 24-hour and seven-day reports prepared in accordance with this section, 20.5.118.1801 NMAC and 20.5.18.1802 NMAC, monitoring results, system checks, the investigation performed in accordance with 20.5.18.1801 NMAC, and any other information available to the department. The department shall provide a written determination that a release is a confirmed release to all affected owners and operators, and shall state the basis for the determination.

[20.5.118.1800 NMAC - N, 07/24/2018]

[To provide notice to the department under Subsection A of this section, telephone the department staff person currently on duty. The petroleum storage tank bureau's pages on the department website provide the phone number and an optional incident reporting form.]

20.5.118.1801 SUSPECTED RELEASES:

A. Owners, operators, certified installers, certified junior installers, and testers of storage tank systems shall report the following conditions, which are considered suspected releases, to the department within 24 hours, in accordance with 20.5.118.1800 NMAC, and follow the procedures in Subsection B of this section:

(1) evidence of released regulated substances in the vicinity of the storage tank site, including but not limited to, the presence of non-aqueous phase liquid or vapors in soils, basements, sewer and utility lines, groundwater, drinking water or nearby surface water;

(2) unusual operating conditions such as, but not limited to, no flow of product, slow flow of product, the erratic function of product dispensing equipment, the sudden loss of a regulated substance

from the storage tank system, an unexplained presence of water in the storage tank system, the presence of a regulated substance in containment sumps or in the annular or interstitial space of secondarily contained tanks or piping, or interstitial sensor alarm conditions, unless after an investigation:

(a) the storage tank system equipment or component is determined not to have released regulated substances into the environment;

(b) all defective storage tank system equipment or components are immediately repaired or replaced; and

(c) for secondarily contained storage tank systems, except as provided for in Subparagraph (d) of Paragraph (2) of Subsection A of 20.5.108.808 NMAC, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example brine filled) is immediately removed.

(3) monitoring or test results, including investigation of an alarm, that are anything other than a "pass" or "normal" result from any release detection method in 20.5.108 NMAC and 20.5.111 NMAC, or that indicate a release may have occurred unless:

(a) the monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring is performed which does not indicate that a release has occurred;

(b) the leak is contained in the secondary containment; and

(i) except as provided for in Subparagraph (d) of Paragraph (2) of Subsection A of 20.5.108.808 NMAC, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and

(ii) all defective storage tank system equipment or components are immediately repaired or replaced.

(c) the investigation determines no release has occurred;

(d) in the case of statistical inventory reconciliation, described in 20.5.108 NMAC, inconclusive or failed monthly results are overturned by the third-party vendor within 24 hours of the receipt of the report from the vendor; or

(e) the alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling or dispensing from the tank during release detection testing).

(4) failing results from continuous monitoring or periodic testing of spill prevention equipment and containment sumps; or

(5) other evidence of failure or deterioration such as but not limited to holes, cracks, or corrosion in the storage tank system.

B. Owners and operators shall investigate all suspected releases of regulated substances within seven days of discovery of the suspected release. Owners and operators shall conduct appropriate storage tank system testing, site check or another procedure, with prior approval by the department of the procedure.

(1) System test. Owners and operators shall conduct appropriate system tests approved by the department according to the requirements for tightness testing for USTs in 20.5.108.804 NMAC and in Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC, and for ASTs in 20.5.111.1101 NMAC and Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.111.1105 NMAC, or as appropriate, secondary containment testing described in 20.5.107 NMAC or 20.5.110 NMAC.

(a) The test must determine whether:

(i) a leak exists in any portion of the tank or piping that has the potential to contain a regulated substance;

(ii) a breach of the inner or outer wall of the secondary containment has occurred; or

(iii) the integrity of the tank system is compromised such that a release has occurred.

(b) If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, upgrade or close the storage tank system. In addition, owners and operators must begin corrective action in accordance with 20.5.119 NMAC if test results for the storage tank system indicate that a release has occurred.

(c) Further investigation is not required if test results for the storage tank system do not show a leak exists and if environmental contamination is not the basis for suspecting a release.

(2) Site check. When there is evidence of a release of a regulated substance in the vicinity of a storage tank system, owners and operators shall conduct a site check as directed by the department.

(a) Owners and operators shall investigate a release in the locations where contamination is most likely to be present at the storage tank site.

(b) In selecting sample types, sample locations, and measurement methods, owners and operators shall consider the nature of the stored regulated substance, the basis for the suspected release report, the type of backfill, depth to groundwater, and other appropriate site-specific conditions.

(c) The department shall approve sample types, locations and methods of measurement.

(3) In the case of a suspected release indicated by statistical inventory reconciliation, after following the process outlined in 20.5.108.809.C NMAC, owners and operators shall conduct appropriate system tests or site checks approved by the department.

C. In the event of a suspected release, the secretary may

take any action necessary, including suspension of the use of a storage tank system and requiring additional testing or other actions to investigate whether a release has occurred.

D. Owners and operators who do not demonstrate that a release has not occurred within 30 days of the reporting of a suspected release, or another timeframe approved by the department, shall be subject to the requirements of 20.5.118.1802 NMAC and the requirements of 20.5.119 NMAC or 20.5.120 NMAC for confirmed releases.

E. Owners and operators shall report to the department in writing all results of the storage tank system test, site check or other procedure approved by the department in accordance with this part. Any report submitted in accordance with this section shall contain, at a minimum, the information required in Subsection A of 20.5.118.1800 NMAC. [20.5.118.1801 NMAC - N, 07/24/2018] [To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the petroleum storage tank bureau's pages on the department website.]

20.5.118.1802 CONFIRMED RELEASES:

A. Owners, operators, certified installers, certified junior installers, and testers of storage tank systems shall report the following conditions to the department within 24 hours, in accordance with 20.5.118.1800 NMAC:

(1) visible leaks or seeps from any part of a storage tank system;

(2) evidence of released regulated substances at the storage tank site including, but not limited to, the presence of non-aqueous phase liquid or vapors in soils, basements, sewer and utility lines, groundwater, drinking water or nearby surface water; and

(3) evidence of released regulated substances in

soils, including, but not limited to:

(a) any soil analytical results that indicate the presence of total petroleum hydrocarbons at concentrations equal to or exceeding 100 parts per million;

(b) any petroleum hydrocarbon vapor field screening results that exceed 100 whole instrument units; or

(c) significant visible staining or obvious petroleum odors.

B. If a release is confirmed, the secretary may take any action necessary, including suspension of the use of a storage tank system, until the owner or operator identifies and stops the release.

C. Owners and operators of storage tank systems shall address confirmed releases in accordance with 20.5.119 and 20.5.120 NMAC, and shall empty the storage tank and close the storage tank system in accordance with 20.5.115 NMAC until the storage tank system is repaired or replaced so that the release will not recur. [20.5.118.1802 NMAC - N, 07/24/2018] [To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the petroleum storage tank bureau's pages on the department website.]

20.5.118.1803 SPILLS AND OVERFILLS:

A. Owners and operators of storage tank systems shall contain and immediately clean up a spill or overfill, and report the spill or overfill to the department within 24 hours in accordance with 20.5.118.1800 NMAC except as provided in Subsection C of this section, and begin corrective action in accordance with 20.5.119 and 20.5.120 NMAC in the following cases:

(1) any spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons, that causes a sheen on nearby surface water, or that creates a vapor hazard pursuant to

20.5.119.1902 NMAC; and

(2) any spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and 40 CFR part 302.

B. Owners and operators of storage tank systems shall contain and immediately clean up a spill or overflow of petroleum that is less than 25 gallons, and a spill or overflow of a hazardous substance that is less than the reportable quantity. Owners and operators shall notify the department if cleanup cannot be accomplished within 24 hours, or within another reasonable time period which has been established by the department.

C. Pursuant to 40 CFR parts 302.7 and 355.40, owners and operators shall also immediately report a release of a hazardous substance equal to or in excess of its reportable quantity to the national response center under sections 102 and 103 of CERCLA and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.

[20.5.118.1803 NMAC - N, 07/24/2018]

[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the petroleum storage tank bureau's pages on the department website.]

HISTORY OF 20.5.118 NMAC:

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

EIB/USTR-7, Underground Storage Tank Regulations - Part VII - Release Reporting and Investigation, filed 9/12/88.

EIB/USTR-7, Underground Storage Tank Regulations - Part VII - Release Reporting, Investigation and Confirmation, filed 6/12/90.

History of Repealed Material:

20 NMAC 5.7, Underground Storage Tank Regulations - Release Reporting, Investigations, and Confirmation (filed 10/6/95), repealed 8/15/03.

20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases (filed 7/16/03), repealed 6/15/09.

20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases (filed 6/15/09), repealed 7/24/18.

Other History:

EIB/USTR-7, Underground Storage Tank Regulations - Part VII - Release Reporting, Investigation and Confirmation (filed 6/12/90) was renumbered, reformatted and replaced by 20 NMAC 5.7, Underground Storage Tanks - Release Reporting, Investigations and Confirmation, effective 11/5/95.

20 NMAC 5.7, Underground Storage Tanks - Release Reporting, Investigations and Confirmation (filed 10/6/95) was renumbered, reformatted and replaced by 20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases, effective 8/15/03.

20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases (filed 7/16/03) was replaced by 20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases, effective 6/15/09.

20.5.7 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases (filed 6/15/09) was reformatted, renumbered, and replaced by 20.5.118 NMAC, Petroleum Storage Tanks - Reporting and Investigation of Suspected and Confirmed Releases, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

TITLE 20

**ENVIRONMENTAL
PROTECTION**

**CHAPTER 5 PETROLEUM
STORAGE TANKS**

**PART 119 CORRECTIVE
ACTION FOR STORAGE TANK
SYSTEMS CONTAINING
PETROLEUM PRODUCTS**

20.5.119.1 ISSUING

AGENCY: New Mexico Environmental Improvement Board. [20.5.119.1 NMAC - N, 07/24/2018]

20.5.119.2 SCOPE: This part

applies to owners and operators of petroleum storage tanks as defined in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC. If the owner and operator of a petroleum storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of non-compliance.

[20.5.119.2 NMAC - N, 07/24/2018]

20.5.119.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14, NMSA 1978; the Water Quality Act, Sections 74-6-1 through 74-6-17, NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17, NMSA 1978.

[20.5.119.3 NMAC - N, 07/24/2018]

20.5.119.4 DURATION:

Permanent.

[20.5.119.4 NMAC - N, 07/24/2018]

20.5.119.5 EFFECTIVE

DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.119.5 NMAC - N, 07/24/2018]

20.5.119.6 OBJECTIVE:

The purpose of this part is to provide for corrective action at sites contaminated by releases from petroleum storage tank systems and to protect the public health, safety and welfare and the environment of the state.

[20.5.119.6 NMAC - N, 07/24/2018]

20.5.119.7 DEFINITIONS:

The definitions in 20.5.101 NMAC apply to this part.

[20.5.119.7 NMAC - N, 07/24/2018]

20.5.119.8 to 20.5.119.1899

[RESERVED]

20.5.119.1900 GENERAL:

A. Owners and operators of petroleum storage tank systems shall take corrective action to address all releases, including such action as collection and analysis of relevant site-specific data, soil remediation, groundwater and surface water remediation and any other appropriate actions pursuant to this part, in a manner protective of public health, safety and welfare and the environment.

B. Upon confirmation of a release pursuant to 20.5.118 NMAC or identification and reporting of a release in any other manner, owners and operators of petroleum storage tank systems shall comply with the requirements of this part if the release:

(1) is of unknown volume or is greater in volume than 25 gallons; or

(2) is of any size and the owner or operator is directed by the department to comply with this part.

C. Owners and

operators shall maintain and provide to the department all reports required in 20.5.119.1932 and 20.5.119.1933 NMAC.

D. Owners and operators shall mail or deliver and provide paper and electronic copies of all written notices and reports required under this part to be submitted to the department to the owner or operator's assigned project manager from the petroleum storage tank bureau, New Mexico environment department.

E. Owners and operators shall comply with any site-specific timeline or deadline that is approved in writing by the department at the time of workplan approval. If no applicable site-specific timeline has been approved, the following timeline shall apply to all corrective action requirements under this part. The time deadlines set forth in this part are computed from the date of reporting of a release or of reporting of the confirmation of a suspected release pursuant to 20.5.118.1800 NMAC unless another event is specified in these.

Continued on the following page

Default Corrective Action Timeline

Deadline, in days from report:	Action or deliverable due date, as defined above:
0	report discovery or confirmation of a release
3	72-hour report
14	14-day report
60	submit NAPL assessment
60	initiate interim removal of contaminated soil
60	preliminary investigation report
120	secondary investigation report
When monitored natural attenuation is used:	
510	monitored natural attenuation (MNA) plan
570	implementation of MNA
935	first annual MNA monitoring report
935	annual evaluation of MNA report
When other remediation is used:	
510	conceptual remediation plan
540	final remediation plan
600	implementation of remediation
690	first quarterly monitoring report
965	annual evaluation of remediation system report

F. All owners and operators are responsible for compliance with all provisions of this part. An owner or operator may designate a representative to facilitate compliance with this part. The designation of such a representative shall not affect the department's right to seek compliance at any time from any owner or operator and shall not relieve owners or operators of any legal liabilities or responsibilities they may have under this part or otherwise under the law.

G. Except for 20.5.119.1901, 20.5.119.1902 and 20.5.119.1903 NMAC, owners and operators shall submit to the department written workplans for all corrective action, including voluntary corrective action, as required under this part. Owners and operators may submit workplans in stages to reflect the sequence or types of corrective action described in 20.5.119 NMAC at the site, but the owners and operators shall submit all workplans to and obtain approval by the department in writing for technical adequacy before the corrective action is commenced.

H. Unless otherwise approved, a qualified firm as specified in 20.5.122 NMAC shall perform all corrective action and, when required by the rules in Title 20, Chapter 5 NMAC, a professional engineer as defined in 20.5.101.7 NMAC.

(1) All contractors and their subcontractors shall have appropriate licenses and certifications and be in compliance with applicable local, state and federal laws and regulations, including but not limited to the rules in Title 16, Chapter 39 NMAC governing engineers, 14.6.3 NMAC governing contractors and 29 CFR part 1910 governing worker health and safety.

(2) Owners and operators shall identify all prime contractors and all subcontractors in all workplans submitted to the department.

I. Where site conditions are amenable, owners and operators may use accelerated site characterization techniques if pre-approved by the department.

J. All monitoring wells shall be permitted in conformance with applicable federal, state and local laws and regulations in effect at the time of installation.

K. Owners and operators shall clearly mark and secure monitoring wells and major remediation equipment to prevent unauthorized access, tampering and damage. Owners and operators shall close or abandon all wells in accordance with the requirements of applicable federal, state and local laws and regulations.

L. The department shall notify owners and operators taking corrective action and contractors of state-lead sites in writing when it has determined that a deliverable completed under an approved workplan is satisfactory. The written notice shall also inform the owner, operator or contractor that any application for payment from the fund of costs associated with the approved deliverable must be received by the department within 90 days of the date the owner, operator or contractor received written notice of approval and that the department shall not grant extensions of the deadline except for good cause as shown pursuant to 20.5.123.2318 NMAC.

[20.5.119.1900 NMAC - N, 07/24/2018]

[The address of the petroleum storage tank bureau, remedial action program, is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.119.1901 MINIMUM SITE ASSESSMENT, INITIAL RESPONSE:

A. Upon discovery or confirmation of a release, owners and operators of the storage tank system shall immediately prevent any further release from the storage tank system by whatever means necessary, including removing product from the storage tank system or any part of the storage tank system that is known to leak or is suspected of leaking. If necessary, owners and operators shall remove the storage tank system from service in accordance with 20.5.115 NMAC.

B. Owners and operators shall inform the department in accordance with 20.5.118.1800 NMAC of any release and action taken to mitigate immediate damage from the release.
[20.5.119.1901 NMAC - N, 07/24/2018]

20.5.119.1902 MINIMUM SITE ASSESSMENT, INITIAL ABATEMENT:

A. Owners and operators shall undertake the initial abatement and site investigation actions specified in this section within 72 hours of discovery or confirmation of a release pursuant to 20.5.118 NMAC, using the default timeline as set forth in Subsection E of 20.5.119.1900 NMAC or as otherwise approved by the department.

B. Owners and operators shall identify the location and details of construction of all private water supply wells, using readily accessible public records, within a 1,000-foot radius, and all public water supply wells within a one mile radius of the storage tank system, and shall determine if the identified wells lie within a designated wellhead protection area. Owners and operators shall take appropriate measures to protect these water

supplies from contamination.

C. Owners and operators shall contain or remediate releases which present an imminent threat of contamination to or are within 500 feet of a surface water course as soon as practicable to prevent contamination of surface water. If the surface water course is a drinking water supply, within 24 hours owners and operators shall notify the owners or operators of all drinking water supplies likely to be affected by the release.

D. If the release has contaminated a water supply, owners and operators shall immediately provide a temporary replacement drinking water supply, as well as adequate warnings or other mechanisms to prevent persons from drinking or otherwise contacting water contaminated by the release. Within seven days of the discovery or confirmation of a release pursuant to 20.5.118 NMAC that has contaminated a water supply, owners and operators shall provide a replacement water supply which is of adequate quality and quantity for drinking, bathing, cooking and washing. Owners and operators shall maintain the replacement water supply until an alternate water supply sufficient for all domestic purposes is available.

E. Owners and operators shall identify the depth, location, composition and construction of all underground utilities including water lines, sewer lines, communication cables, electric lines, and natural gas lines within the area of the release to assess the susceptibility of these utilities to permeation by contaminants or deterioration caused by contaminants. Owners and operators shall notify the utility owner that the release has occurred and obtain permission to perform a site check of the utilities or other subsurface structures most likely to be contaminated by the release to determine whether petroleum products or vapors are present.

F. Owners and operators shall complete an investigation to determine whether

potentially explosive or harmful vapors are present in any building, utility corridor, basement, or other surface or subsurface structure on or adjacent to the release site.

1) The investigation shall include testing for vapors using the following:

(a) a combustible gas indicator or equivalent instrument calibrated according to the manufacturer's instructions to test for potentially explosive levels of petroleum hydrocarbon vapors; and

(b) a photoionization detector, flame ionization detector or another method approved by the department calibrated according to the manufacturer's instructions to test for potentially harmful petroleum hydrocarbon vapors.

(2) In the event owners and operators discover potentially explosive levels of petroleum hydrocarbon vapors or potentially harmful petroleum hydrocarbon vapors in any structure in the vicinity of the release site, owners and operators shall take immediate action to mitigate the vapor hazard. Within seven days of the discovery of the vapors, owners and operators shall install and place into operation a vapor mitigation system capable of reducing petroleum hydrocarbon vapors to safe levels within the shortest reasonable time. The vapor mitigation system shall be designed by and constructed under the direct, responsible, supervisory control of a professional engineer, when required by the department.

(a) Once a vapor mitigation system has been installed, owners and operators shall monitor and report in writing to the department the levels of petroleum hydrocarbon vapors in the affected structures weekly for the first month and monthly thereafter unless a different monitoring schedule is approved in writing by the department. This monitoring shall be performed in accordance with Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

(b) After the vapor mitigation system has been in operation for three months, owners and operators shall have 30 days to submit to the department a written summary report containing the monitoring results. The department may direct the owner and operator to modify the vapor mitigation system as necessary to reduce petroleum hydrocarbon vapors to safe levels. Owners and operators shall submit monitoring results to the department at three-month intervals until operation of the vapor mitigation system is discontinued in accordance with this section.

(3) Owners and operators shall continue to operate the vapor mitigation system until the results of three consecutive monthly monitoring events indicate the following:

(a) levels of petroleum hydrocarbon vapors are less than ten percent LEL; and

(b) levels of petroleum hydrocarbon vapors are less than or equal to five whole instrument units above ambient levels in any structure in the vicinity of the release site when measured as required in Subparagraphs (a) and (b) of Paragraph (1) of this Subsection.

(4) When operation of a vapor mitigation system is discontinued, owners and operators shall monitor the vapor levels in the structure weekly for the first month and monthly thereafter until one calendar year has passed, or as otherwise approved by the department. If during this period the levels exceed those set forth in Subparagraphs (a) and (b) of Paragraph (3) of this subsection, owners and operators shall notify the department and take the necessary corrective action, as directed by the department.

G. Owners and operators shall remove any exposed petroleum products related to the release and mitigate any related immediate fire and safety hazards as soon as possible, but in no case no later than 72 hours after the

confirmation or other identification of the release.

[20.5.119.1902 NMAC - N, 07/24/2018]

20.5.119.1903 MINIMUM SITE ASSESSMENT, 72-HOUR AND 14-DAY REPORTS:

A. Owners and operators shall make an oral report to the department summarizing the abatement procedures undertaken and the results of action taken under 20.5.119.1901 and 20.5.119.1902 NMAC within 72 hours of the discovery or confirmation of a release pursuant to 20.5.118 NMAC.

B. Owners and operators shall submit a paper and electronic copy of a written report to the department within 14 days of the discovery or confirmation of a release pursuant to 20.5.118 NMAC, in addition to the written notice required under 20.5.118 NMAC. This report shall summarize all the work performed pursuant to 20.5.119.1901 and 20.5.119.1902 NMAC and shall include the following information, as appropriate:

(1) a map based on a United States geologic survey topographic map showing locations of actual and potential receptors, including, but not limited to, private and public water supplies identified pursuant to 20.5.119.1902 NMAC; owners and operators shall draw two concentric circles, at 1,000 feet and at one mile radii from the center of the release, and shall also show on the map all surface water courses within a one mile radius of the site;

(2) information about any water supplies known or suspected to have been contaminated by the release;

(3) most likely direction of groundwater flow;

(4) a site plan map showing locations of utilities, surface structures and storage tank systems;

(5) information about underground utilities gathered in accordance with Subsection E of 20.5.119.1902

NMAC;

(6) soil borings, logs, and details of construction of all wells, if available;

(7) description of any actions taken to abate adverse effects;

(8) data from vapor monitoring performed in the vicinity of the site;

(9) description of any actions taken to abate potentially explosive or harmful vapors and any plans for further action;

(10) description of fire and safety hazards resulting from the release and actions taken to abate such hazards;

(11) description of current and past ownership of the property, storage tank systems, the substance stored in the system, age of tank and history of any tank removals;

(12) present land use, within 1,000 feet of the site; and

(13) records of tightness tests, repairs to the storage tank system, release detection and monitoring results.

[20.5.119.1903 NMAC - N, 07/24/2018]

20.5.119.1904 NOTICE, SPLIT SAMPLES AND SAMPLING PROCEDURES:

A. Except for the 72-hour vapor check, owners and operators shall notify the department at least four days prior to the collection of any samples which are required pursuant to this part and upon which laboratory analyses are to be performed to allow the department an opportunity to be present at the collection of samples or to split samples.

B. Owners and operators shall notify the department at least four days prior to the decommissioning, destruction or abandonment of any wells.

C. Owners and operators shall collect, store and transport all samples necessary to comply with the requirements of this part in a manner consistent with the

nature of the known or suspected contaminants and in conformance with applicable federal, state and local laws and regulations.
[20.5.119.1904 NMAC - N, 07/24/2018]

20.5.119.1905 INTERIM REMOVAL OF NON-AQUEOUS PHASE LIQUID:

A. Owners and operators shall assess the potential for remediation of non-aqueous phase liquid (NAPL) where there is a thickness of greater than one-eighth inch of NAPL on surface water, in any excavation pit, or in any well. Owners and operators shall submit the assessment to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

B. The department may approve interim removal of NAPL when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment. In this event, owners and operators shall remove NAPL in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

C. Owners and operators shall remove NAPL in a manner that minimizes the spread of contamination into uncontaminated media.

D. Owners and operators shall store and dispose of NAPL in accordance with all flammable and combustible liquids codes approved by the state fire marshal or other local authority, state hazardous waste regulations (20.4.1 NMAC), and any other applicable laws or regulations.

E. Owners and operators shall report recovery and disposal of NAPL to the department.
[20.5.119.1905 NMAC - N, 07/24/2018]

20.5.119.1906 INTERIM REMOVAL OF CONTAMINATED SOIL:

A. Owners

and operators shall remediate contaminated soil in accordance with 20.5.119.1912, 20.5.119.1914, and 20.5.119.1922 NMAC, unless approved by the department to remove and treat contaminated soil in accordance with this section.

(1) The department may approve interim removal of contaminated soil when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment.

(2) Under this section, owners and operators shall excavate, treat and dispose of contaminated soil using methods approved by the department, in compliance with local laws and regulations, and under a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

(3) The department shall approve the vertical and horizontal extent of soil to be excavated.

B. When treating or temporarily storing soil on site, owners and operators shall:

(1) for treatment on site, spread soil in a six-inch layer over an impervious liner or other surface approved by the department to prevent infiltration to groundwater and place the layer of soil on level ground and berm to prevent runoff from contaminating other soil or surface water;

(2) for temporary storage, place the soil in a secure, bermed area on an impervious liner or surface or in a secured and properly labeled container, as approved by the department; and

(3) handle soil in a manner that does not contaminate groundwater, surface water or other uncontaminated soil or does not create or cause a public nuisance or threat to human health, safety and welfare or the environment.

C. When contaminated soil is taken off site, owners and operators shall provide the department with the following information within 14 days of removal of the soil from

the site:

(1) written documentation of the type and concentration of contaminants, volume and weight of soil, method of treatment, date transported, and location of the site of disposal or treatment;

(2) a signed, written statement by the owner of the treatment or disposal site describing the location of the site and expressly accepting the contaminated soil; and

(3) if contaminated soil is taken to a permitted solid waste facility, a manifest signed by the generator, transporter and the owner or operator of the solid waste facility.

D. Remediation shall be considered complete when the requirements in 20.5.119.1929 NMAC are met.

E. In accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC, owners and operators shall submit to the department a report describing the removal and treatment of contaminated soil.

(1) The report shall describe the soil removal action and its effectiveness, including volumes and weight removed.

(2) Owners and operators shall submit the report within 30 days of the soil removal action.

[20.5.119.1906 NMAC - N, 07/24/2018]

20.5.119.1907 MINIMUM SITE ASSESSMENT, PRELIMINARY AND OTHER REQUIRED INVESTIGATIONS:

A. A preliminary investigation is not required when owners and operators can demonstrate that the contamination has not reached groundwater and one of the following two conditions apply:

(1) the release is remediated in accordance with this part within 72 hours of discovery or confirmation; or

(2) the release is permanently contained within the

UST excavation area or the AST containment system.

B. If the contamination extends beyond the boundaries of the property where the release originated, owners and operators shall conduct a secondary investigation in accordance with 20.5.119.1910 NMAC.

C. When the horizontal and vertical extent and magnitude of contamination from the release have been characterized, and it has been demonstrated that contamination has not reached groundwater, owners and operators, if required by the department, shall perform a soil-only contamination assessment and related corrective action in accordance with 20.5.119.1912 NMAC.

D. When a potential or actual threat from vapor intrusion is identified, owners and operators, if required by the department, shall perform a petroleum vapor intrusion assessment and related corrective action in accordance with 20.5.119.1913 NMAC. [20.5.119.1907 NMAC - N, 07/24/2018]

20.5.119.1908 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION

REQUIREMENTS: Owners and operators shall conduct a preliminary investigation in accordance with this subsection and under a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC. The preliminary investigation shall determine the following, unless otherwise approved by the department.

A. If not previously identified and reported under 20.5.119.1903 NMAC, the preliminary investigation shall determine the source of contamination, the regulated substance released or suspected of being released at the site, the media of concern, current and potential receptors, current and anticipated use of property, complete and incomplete exposure pathways, and routes of exposure.

B. The preliminary

investigation shall also determine the horizontal and vertical extent and magnitude of soil contamination.

(1) Owners and operators shall conduct a soil boring survey by advancing a continuously cored soil boring at each area of release where soil contamination is most likely to be encountered unless otherwise directed by the department. The initial incident report and a soil vapor survey may be used in locating these areas. Owners and operators shall advance at least one of the borings into the groundwater saturated zone or, with approval from the department, to a depth at which measured levels of contaminants in soil are no longer detectable by laboratory analysis, and hydrocarbon vapor concentrations, as determined with a field instrument, are less than 100 whole instrument units.

(2) Owners and operators shall advance at least four additional soil borings to characterize the release within property boundaries. Borings shall be completed to the depth at which contaminants in soil are no longer detectable by laboratory analysis, and hydrocarbon vapor concentrations, as determined with a field instrument, are less than 100 whole instruments units. If the soil borings indicate that contaminated soil extends beyond the boundary of the property on which the storage tank system is located, owners and operators shall advance soil borings sufficient to characterize the extent and magnitude of contamination within site boundaries.

(3) Owners and operators shall assess at five-foot intervals, field estimates of concentrations of petroleum hydrocarbons in the soil borings and select and prepare samples for laboratory analysis.

(4) Owners and operators shall gather field data for soil classification, determining and recording color, grain size, texture, description of lithification, plasticity and clay content.

(5) The preliminary investigation shall

include determinations of derived values for soil bulk density (g/cc), soil moisture content (percent by mass), and effective porosity, and fraction organic carbon content (percent by mass) using samples taken from an uncontaminated area of the vadose zone.

(6) Owners and operators shall delimit the horizontal and vertical extent of contaminant saturated soil as defined in 20.5.101.7 NMAC.

C. Owners and operators shall determine whether groundwater or surface water has been contaminated above applicable standards or whether a potential for groundwater or surface water contamination is present by performing the following:

(1) install at least three groundwater monitoring wells at locations where the results of the soil boring survey conducted pursuant to this section indicate that groundwater may be contaminated; owners and operators shall:

(a) locate monitoring wells so that groundwater gradient can be determined;

(b) install at least one monitoring well on site in the area of highest contamination as determined by the soil borings installed in conformance with the initial incident report and other relevant information;

(c) install one of the monitoring wells in the estimated down-gradient direction from the area of highest contamination;

(d) construct wells in accordance with all applicable federal, state and local laws and regulations; and

(e) survey the wells using a New Mexico licensed professional surveyor, in decimal degrees of latitude and longitude in accordance with NAD 83;

(2) calculate the direction and gradient of groundwater flow;

(3) inspect all

monitoring wells for the presence of NAPL using a method approved by the department; if NAPL is present in any well, measure the apparent thickness, delimit its horizontal extent, and initiate recovery procedures in accordance with 20.5.119.1905 NMAC; and

(4) sample each monitoring well that does not contain NAPL and analyze the sample for contaminants of concern to determine whether:

(a) immediate mitigation procedures are warranted; and

(b) other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.119.1902 NMAC by:

(i) identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.119.1902 NMAC;

(ii) checking for the presence of vapors in accordance with 20.5.119.1902 and 20.5.119.1907 NMAC; and

D. Owners and operators shall identify all other hazards and potential threats to public health, safety and welfare and the environment which may exist as a result of the release to determine if:

(1) immediate mitigation procedures are warranted; and

(2) other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.119.1903 NMAC by:

(a) identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.119.1902 NMAC;

(b) checking for the presence of vapors in accordance with 20.5.119.1902 and 20.5.119.1907 NMAC.
[20.5.119.1908 NMAC - N,

07/24/2018]

20.5.119.1909 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION REPORT:

A. Owners and operators shall submit paper and electronic copies of a written report of the preliminary investigation and other requirements of the minimum site assessment as defined in 20.5.101.7 NMAC in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC. The report shall include the information gathered under 20.5.119.1901, 20.5.119.1902, 20.5.119.1903 and 20.5.119.1907 NMAC and shall conform to the requirements of this section and 20.5.119.1908 NMAC.

B. Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

C. The minimum site assessment report shall, at a minimum, include all pertinent data collected during the minimum site assessment investigation, interpretation of that data using cross sections, contoured maps that depict the magnitude and extent of all contaminated media, identification of any threatened receptors, recommendations for additional work and justification for the recommended work.

D. The department shall review the report and notify owners and operators of any inadequacies in the report as soon as feasible. Owners and operators shall, in accordance with a timeline approved by the department, correct the report and resubmit it to the department for review and written approval. If the revised report does not conform to the minimum site assessment, preliminary investigation requirements in this section and 20.5.119.1908 NMAC, the department shall reject the report and the owner and operator shall be determined

not to have conducted a minimum site assessment for the purposes of Subparagraph (c) of Paragraph (1) of Subsection B of Section 74-6B-8 NMSA 1978. The department's failure to review or to comment on this report shall not relieve the owner and operator of their responsibilities under this part or the law.

E. Owners and operators shall comply with the requirements of any local government which has designated a wellhead/ source water protection area that includes the area of the release.

F. Owners and operators shall provide notice that includes the contaminants identified, as well as the horizontal and vertical extent of those contaminants, to all owners of property located within the extent of contamination.
[20.5.119.1909 NMAC - N, 07/24/2018]

20.5.119.1910 SECONDARY INVESTIGATION:

A. Owners and operators shall perform a secondary investigation in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC when the department makes at least one of the following determinations about the site:

(1) the extent and magnitude of contamination in all media has not been delimited by the preliminary investigation; or

(2) the release threatens public health, safety and welfare or the environment.

B. The secondary investigation shall determine the following:

(1) the horizontal and vertical extent and magnitude of soil contamination both on and off site;

(2) the horizontal extent and magnitude of dissolved phase groundwater contamination both on and off site;

(3) the vertical extent and magnitude of dissolved phase groundwater contamination, when site conditions warrant;

(4) characteristics, aerial extent, estimated volume and apparent thickness of NAPL in wells;

(5) the elevation of groundwater and surface water and the gradient, rate and direction of groundwater and surface water flow;

(6) the rate and direction of contaminant migration;

(7) the hydrologic properties of the contaminated portion of the aquifer including hydraulic conductivity, transmissivity and storativity; the department may require field verification of estimates made from literature;

(8) whether the aquifer is perched;

(9) whether the aquifer is confined or unconfined; and

(10) any other technical information requested by the department which is reasonably necessary to meet the requirements of this part.

[20.5.119.1910 NMAC - N, 07/24/2018]

20.5.119.1911 SECONDARY INVESTIGATION REPORT:

A. Owners and operators shall submit paper and electronic copies of a written report of the secondary investigation to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC. The report shall include all information gathered under 20.5.119.1910 NMAC and shall conform to the requirements of this part.

B. Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

C. The secondary investigation report shall, at a minimum, include all pertinent

data collected during the secondary investigation, interpretation of that data using cross sections, contoured maps that depict the magnitude and extent of all contaminated media, identification of any threatened receptors, recommendations for additional work and justification for the recommended work.

D. The department shall review the report and notify owners and operators of any inadequacies in the report within 30 days of receipt. Owners and operators shall, in accordance with a timeline approved by the department, correct the report and resubmit it to the department for review and written approval. If the revised report does not meet the requirements of 20.5.119.1910 NMAC, the owner and operator will be in violation of this part until the inadequacies are corrected. The department's failure to review or to comment on the secondary investigation report shall not relieve the owner and operator of their responsibilities under this part or the law.

E. Owners and operators shall provide notice that includes the contaminants identified, as well as horizontal and vertical extent of those contaminants, to all owners of property located within the extent of contamination who were not previously notified in accordance with 20.5.119.1909 NMAC.

[20.5.119.1911 NMAC - N, 07/24/2018]

20.5.119.1912 SOIL-ONLY CONTAMINATION ASSESSMENT:

The soil-only contamination assessment is intended to determine whether soil contamination poses a threat to human health or the environment including groundwater or may pose a threat in the future such that corrective action is required. Owners and operators shall comply with this section as required by the department. Owners and operators shall obtain written approval from the department before initiating the evaluation.

A. After the horizontal and vertical extent and magnitude

of the soil contamination from the release has been fully characterized and where groundwater has not been impacted, the department may require owners and operators to demonstrate the extent to which a release may pose a threat to human health and the environment.

B. Owners and operators shall use the department approved risk assessment guidance for site investigations and remediation; or equivalent assessment tool as required and approved by the department to comply with the requirements of this section.

C. When representative concentrations of any contaminant of concern equal or exceed any soil screening levels (SSLs) as discussed in Subsection B of 20.5.119.1912 NMAC for any exposure pathway, owners and operators shall perform a site-specific risk assessment if directed by the department.

D. Soil-only contamination assessment reports shall be submitted in accordance with 20.5.119.1933 NMAC and shall be maintained in accordance with 20.5.119.1932 NMAC.

[20.5.119.1912 NMAC - N, 07/24/2018]

20.5.119.1913 PETROLEUM VAPOR INTRUSION

ASSESSMENT: A vapor intrusion assessment is intended to determine if vapor intrusion poses a threat to human health and the environment specifically within an overlying building or structure such that corrective action is required. Owners and operators shall comply with this section as required by the department if vapor intrusion poses or may pose a threat to human health or the environment. Owners and operators shall obtain written approval from the department before initiating the evaluation.

A. After the horizontal and vertical extent and magnitude of the soil contamination from the release has been fully characterized, and a threat or potential threat from petroleum vapors intrusion has been identified, owners and operators shall

be required to perform a petroleum vapor intrusion assessment.

B. Owners and operators shall use the environmental protection agency (EPA) technical guide for addressing petroleum vapor intrusion at leaking underground storage tank sites or an equivalent assessment tool as approved by the department to comply with the requirements of this section:

C. If petroleum vapor intrusion has been demonstrated to be present, then the owner and operator shall perform vapor mitigation and corrective action if directed by the department.

D. Petroleum vapor intrusion assessment reports shall be submitted in accordance with 20.5.119.1933 NMAC and shall be maintained in accordance with 20.5.119.1932 NMAC. [20.5.119.1913 NMAC - N, 07/24/2018]

20.5.119.1914 CORRECTIVE ACTION REQUIREMENTS FOR TOTAL PETROLEUM HYDROCARBONS (TPH):

In addition to comparing representative soil concentrations for all contaminants of concern to risk-based screening levels (RBSLs) and site-specific target levels (SSTLs) and concentrations in groundwater and surface water to applicable WQCC and EIB standards, in accordance with, 20.5.119.1912 NMAC, owners and operators shall mitigate, remediate, or remove TPH contamination in soil and groundwater, when directed by the department based upon a determination by the department that the TPH contamination adversely affects public health, safety and welfare or the environment. [20.5.119.1914 NMAC - N, 07/24/2018]

20.5.119.1915 MONITORED NATURAL ATTENUATION:

A. If approved by the department, owners and operators shall submit a plan for monitored natural attenuation to the department if any of the following conditions

have been identified at the site:

(1) concentrations of contaminants of concern exceed site-specific target levels (SSTLs) in soil or WQCC or EIB standards in groundwater or surface water; or

(2) other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

B. Owners and operators shall submit the monitored natural attenuation plan in accordance with this section and 20.5.119.1920 NMAC and in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

C. The intent of the monitored natural attenuation plan is to provide a written description of the methodology proposed and demonstrate how the plan will achieve target concentrations in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment.

The content of the monitored natural attenuation plan, at a minimum and as appropriate, shall include:

(1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing petroleum storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(2) cross sections showing the source contaminant mass in relation to the groundwater contamination;

(3) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(4) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

(5) a schematic drawing depicting the construction details including lithology and screen intervals for the designated monitoring wells;

(6) the justification for selecting the designated monitoring wells;

(7) the recommended approach to monitoring including an implementation and monitoring schedule, the analytical methods, and the justification for the recommendation;

(8) an estimation of the time necessary for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

(9) a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;

(10) public notice in conformance with the following requirements:

(a) owners and operators shall publish a legal notice of the submission or planned submission of the monitored natural attenuation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release; the first notice shall appear within one week of, but not later than, the day of submission of the monitored natural attenuation plan to the department; the second publication of this notice shall occur no later than seven days after the date the monitored natural attenuation plan is submitted to the department, and owners and operators shall submit two certified affidavits of publication from the newspaper to the department within 21 days after the date the monitored natural attenuation plan is submitted;

(b) the notice shall contain the information specified in this section including the following:

(i) a statement that a monitored natural attenuation plan has been submitted to the department proposing actions

to monitor natural attenuation of a release of petroleum products;

(ii) the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of contaminant plume is located, using adequate identification of the properties, including street addresses if applicable;

(iii) a statement that a copy of the monitored natural attenuation plan and all data and modeling related to the monitored natural attenuation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

(iv) a statement that public comments on the plan must be delivered within 21 days of the publication of the second notice, to the owner or operator's assigned project manager at the petroleum storage tank bureau, New Mexico environment department, or a district office if approved by the department, and to the secretary of the environment department;

(c) within seven days of the date a monitored natural attenuation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners; and

(d) owners and operators shall post a notice of the submission of the monitored natural attenuation plan at the release site within seven days of the submission of the monitored natural attenuation plan; the notice shall contain the information specified in this subsection and shall be at least eight and one-half inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the monitored natural attenuation plan is approved and implemented; public comments must be received by the department within 21 days of the date of the

second publication of the public notice; and

(11) other requirements as directed by the department.

[20.5.119.1915 NMAC - N, 07/24/2018]
 [The address of the department's petroleum storage tank bureau, remediation section is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.119.1916 REVIEW AND APPROVAL OF MONITORED NATURAL ATTENUATION PLAN:

A. After the public comment period has ended, the department shall review the plan and shall either approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the monitored natural attenuation plan must be postponed due to significant comments from the public, the department shall notify the owner and operator within 30 days of such a postponement, and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection E of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

B. The department may approve a monitored natural attenuation plan and impose reasonable conditions.

C. If the department determines that the monitored natural attenuation plan is inadequate, owners and operators shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

D. The department may provide notice of the submission of the monitored natural attenuation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event that an informal public meeting, public hearing or

other form of public participation is conducted, the department may postpone its decision on the monitored natural attenuation plan until after a public hearing or meeting is held and a determination is made. Any public hearing or meeting that is held due to significant public interest shall be held within 60 days of determining that there is significant public interest.

[20.5.119.1916 NMAC - N, 07/24/2018]

20.5.119.1917 MONITORED NATURAL ATTENUATION PLAN IMPLEMENTATION:

A. Owners and operators shall implement the monitored natural attenuation plan after department approval in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

B. Owners and operators shall monitor the contamination until the department determines that the natural attenuation is complete pursuant to this part, or unless otherwise approved by the department.

[20.5.119.1917 NMAC - N, 07/24/2018]

20.5.119.1918 REPORTS ON THE MONITORED NATURAL ATTENUATION:

A. Owners and operators shall submit paper and electronic copies of written reports to the department on the progress of the monitored natural attenuation. Owners and operators shall submit the reports annually unless a different reporting period is approved by the department and shall document all work performed during the preceding interval and shall include at a minimum the following information, as appropriate:

(1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing petroleum storage tanks and ancillary equipment, other

sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(2) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(3) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

(4) tabulation of the current and historical results of all water quality analyses and water elevation data;

(5) graphs of appropriate scale of the current and historical water quality analyses and water elevation data versus time;

(6) data evaluation and interpretation, and recommendations; and

(7) other information required by the department.

B. Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department. [20.5.119.1918 NMAC - N, 07/24/2018]

20.5.119.1919 EVALUATION OF MONITORED NATURAL ATTENUATION PLAN:

A. Owners and operators shall evaluate the effectiveness of the monitored natural attenuation plan at the end of each year of monitoring and submit the evaluation to the department for review unless otherwise approved by the department.

B. When the department determines that the plan is not effectively mitigating contamination according to the identified risks to public health, safety and welfare or the environment, owners and operators shall propose an alternative approach or change in the existing monitored natural attenuation plan within 30 days of

the department's determination of ineffectiveness. Within 30 days of the department's approval, owners and operators shall implement the approved changes.

C. After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section. [20.5.119.1919 NMAC - N, 07/24/2018]

20.5.119.1920 MODIFICATION OF MONITORED NATURAL ATTENUATION PLAN:

A. Owners and operators may petition the department to approve a modification of the monitored natural attenuation plan for good cause.

B. The department may approve a modification of the monitored natural attenuation plan only if such modification provides adequate protection of public health, safety and welfare and the environment and the owner or operator complies with the public notice requirements of 20.5.119.1915 NMAC.

[20.5.119.1920 NMAC - N, 07/24/2018]

20.5.119.1921 COMPLETION OF MONITORED NATURAL ATTENUATION:

A. Natural attenuation shall be considered complete when all of the following criteria are met:

(1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

(2) the EIB standard of 0.1 mg/L for methyl tertiary butyl ether (MTBE) has been met in groundwater and surface water;

(3) all applicable site-specific target levels or risk-based screening levels in soil and WQCC and EIB standards in groundwater have been achieved:

(a) the applicable standards shall be achieved concurrently at all compliance wells as approved by the department;

(b) for verification that soil has reached target concentrations, owners and operators shall install at least four soil borings, at least three of which are distributed throughout the previously most contaminated portion of the vadose zone, unless otherwise approved by the department;

(4) corrective action requirements for total petroleum hydrocarbons determined in accordance with 20.5.119.1914 NMAC have been met; and

(5) any other conditions which threatened public health, safety and welfare or the environment have been abated.

B. If any of the conditions of Paragraphs (1) through (5) of Subsection A of this section are not met, the department may require owners and operators to perform additional remediation.

C. Termination of monitored natural attenuation in accordance with this section does not relieve the owner and operator of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

D. Following department approval, and with 30 days' notice unless otherwise approved by the department, owners and operators shall properly abandon wells that are no longer needed for monitoring, in accordance with federal, state and local laws and regulations.

[20.5.119.1921 NMAC - N, 07/24/2018]

20.5.119.1922 CONCEPTUAL REMEDIATION PLAN:

A. If approved by the department, owners and operators shall submit a conceptual remediation plan to the department if any of the following conditions have been identified at the site:

(1) a thickness of greater than one-eighth inch of NAPL is present on the surface of the water, including in any excavation pit, or in any well;

(2)

contaminant saturated soil is present;

(3)

concentrations of contaminants of concern exceed site-specific target levels (SSTLs) in soil or WQCC or EIB standards in groundwater or surface water;

(4) total

petroleum hydrocarbons in soil meet the criteria outlined 20.5.119.1914 NMAC; or

(5) other

conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

B. All remediation

plans shall include but are not limited to methods to mitigate, remove or otherwise remediate the contaminant source areas.

C. Owners and

operators shall submit the conceptual remediation plan in accordance with this section and a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

(1) The

conceptual remediation plan shall provide a written description of all of the methodologies proposed and discuss how the plan will achieve target concentrations and other goals of remedial action in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. Owners and operators shall obtain department approval for the conceptual remediation plan before developing the final remediation plan.

(2) The

conceptual remediation plan, at a minimum and as appropriate, shall include:

(a) a

concise description of site conditions, including hydrogeology, contaminant characteristics and plume dynamics;

(b)

the recommended approach to remediation and justification for the recommendation;

(c)

a clear description of the goals of remediation and the target concentrations to be met in each

medium;

(d)

a narrative description of the proposed methodologies including a preliminary cost comparison and time lines for achieving goals of remediation;

(e)

a cost estimate of implementation including installation, operation and maintenance, and monitoring;

(f)

a schematic diagram of the proposed remediation system or treatment area and a narrative description of its operation;

(g)

a plan view, to scale, of the site showing locations of the proposed equipment or excavation boundaries in relation to the site's physical features and contaminant plumes;

(h)

a description of how the approach will achieve target concentrations and other goals of remediation; and

(i) a

description of additional data required to support the conceptual remediation plan and design of the final plan and how it will be collected.

[20.5.119.1922 NMAC - N, 07/24/2018]

20.5.119.1923 FINAL REMEDIATION PLAN:

A. Following

department approval of the conceptual remediation plan, owners and operators shall develop a final remediation plan in accordance with this section and shall submit three copies of the final remediation plan to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

B. The design and

engineering of any final remediation plan that includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis shall be the responsibility of a professional engineer as defined in 20.5.101.7 NMAC. A professional engineer shall sign and seal all plans and drawings required pursuant to this section, unless otherwise approved by

the department.

C. In order to eliminate

the potential to emit regulated substances to the environment, all engineered remediation systems shall be designed, constructed and operated such that malfunction or failure of any integral component results in automatic shutdown of the entire system. Integral components include but are not limited to pumps, blowers, oil-water separators, oxidizer systems, air strippers, filtration systems and computers.

D. All final

remediation plans shall, at a minimum, include all of the following:

(1) goals of

remediation and target concentrations to be achieved in each medium;

(2) a site

plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing storage tanks, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(3) a

hydrogeologic cross section showing contaminant mass in relation to the remediation system and a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(4) an

implementation schedule;

(5) engineered

plans and specifications in accordance with Subsection E of this section;

(6) a schedule

for remediation of the source areas for protection of receptors and for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

(7) a

design and schedule for a system optimization that meets the requirements of 20.5.119.1928 NMAC;

(8) a

contingency plan in case of a change

in site conditions that threatens public health, safety and welfare or the environment;

(9) copies of all permits, permit applications, and property access agreements required to initiate remediation, including, if necessary, permits required by the state engineer, permits for discharge to groundwater or a waste water treatment plant, permits for air emissions or a surface water national pollution discharge elimination system (NPDES) permit;

(10) public notice in conformance with the following requirements:

(a) owners and operators shall publish a legal notice of the submission or planned submission of the final remediation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release; the first notice shall appear within one week of, but not later than, the day of submission of the final remediation plan to the department; the second publication of this notice shall occur no later than seven days after the date the remediation plan is submitted to the department, and owners and operators shall submit two certified affidavits of publication from the newspaper to the department within 21 days after the date the final remediation plan is submitted;

(b) the notice shall contain the information specified in this section including the following:

(i) a statement that a remediation plan has been submitted to the department proposing actions to remediate a release of petroleum products;

(ii) the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of the remediation system will be located, using adequate identification of the properties, including street addresses if applicable;

(iii) a statement that a copy of the

remediation plan and all data and modeling related to the remediation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

(iv) a statement that public comments on the plan must be delivered, within 21 days of the publication of the second notice, to the owner or operator's assigned project manager at the petroleum storage tank bureau, New Mexico environment department, or a district office if approved by the department, and to the secretary of the environment department;

(c) within seven days of the date a remediation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners; and

(d) owners and operators shall post a notice of the submission of the remediation plan at the release site within seven days of the submission of the remediation plan; the notice shall contain the information specified in this subsection and shall be at least eight and on-half inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the remediation plan is approved and implemented; public comments must be received by the department within 21 days of the date of the second publication of the public notice;

(11) for sites where contaminated media are being removed, a description of the ultimate disposal site of contaminated media, location of excavation and trenching, and method of limiting access by pedestrian and vehicular traffic; and

(12) other requirements as directed by the department.

E. In addition to the requirements of Subsection D of this section, all final remediation plans shall include:

(1) for

engineered systems:

(a) unless otherwise approved by the department, a complete and definitive engineering design for a mechanical, electrical, or constructed system, including drawings, plans, diagrams and specifications which are signed and sealed by a professional engineer;

(b) process and instrumentation diagrams;

(c) mechanical arrangement plans and elevations, drawn to scale, showing proposed wells, manifolds, piping details, instrumentation and sampling ports;

(d) details of vapor or fluid extraction or injection wells, as appropriate, including screen length and placement in relation to ground surface, normal and low water table elevations and geologic strata, screen slot size, depths and specifications of the filter pack and seal, and drilling method;

(e) equipment and parts list and specifications including a spare parts list, performance requirements, maintenance requirements and schedule;

(f) electric power requirements including a one-line diagram and schematics;

(g) operation and maintenance commitments and schedules for all facets of the remediation system; and

(h) all other plans, diagrams and specifications that are necessary to properly construct and operate the remediation system in accordance with the remediation plan including but not limited to requirements for:

(i) trenching and protection from traffic;

(ii) concrete repair and replacement;

(iii) restoration of property; and

(iv) location and protection of underground utilities;

(2) for excavation and disposal plans:

(a)

plan view of proposed excavation relative to contaminant plume;

(b) cross-sections of proposed excavation depicting overburden, contaminated material to be removed and backfill;

(c) volume calculations and slope stability analysis;

(d) description of excavation and backfill procedure to be performed in conformance with OSHA and ASTM standards and regulations;

(e) traffic control plan;

(f) description of post-excavation confirmation sampling;

(g) proposed final grade plan;

(h) post-excavation grade survey; and

(i) all other plans, diagrams and specifications that are necessary including but not limited to requirements for:

(i) trenching and protection from traffic;

(ii) concrete repair and replacement;

(iii) restoration of property; and

(iv) location and protection of underground utilities.

[20.5.119.1923 NMAC - N, 07/24/2018]
 [The address of the petroleum storage tank bureau, remediation section is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.119.1924 REVIEW AND APPROVAL OF FINAL REMEDIATION PLAN:

A. Within 30 days of receipt of the final remediation plan and after the public comment period has ended, the department shall review the plan and shall either approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the remediation plan

must be postponed due to significant comments from the public, the department must notify the owner and operator within 30 days of such a postponement, and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

B. The department may approve a final remediation plan and impose reasonable conditions.

C. If the department determines that the final remediation plan is inadequate, owners and operators shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

D. The department may provide notice of the submission of the remediation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event that an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the final remediation plan until after a public hearing or meeting is held and a determination is made. Any public hearing or meeting that is held due to significant public interest shall be held within 60 days of determining that there is significant public interest.

[20.5.119.1924 NMAC - N, 07/24/2018]

20.5.119.1925 IMPLEMENTATION OF FINAL REMEDIATION PLAN:

A. Owners and operators shall implement the final remediation plan after department approval in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC. Owners and operators shall employ a professional engineer to ensure conformance with the final

remediation plan including excavation and installation, commissioning and operation of the system.

B. When the remediation plan includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis:

(1) a professional engineer shall supervise conformance with the final remediation plan including installation, commissioning and operation of the system;

(2) owners and operators shall operate the remediation system continuously until the remediation is terminated pursuant to this part unless otherwise approved by the department; and

(3) owners and operators shall report to the department all interruptions of the operation of the remediation system greater than 72 hours.

C. Owners and operators shall obtain written approval from the department prior to implementing any change to the department-approved engineering design.

D. Following implementation of the final remediation plan, owners and operators shall submit an "as-built" report signed and sealed by the project professional engineer including:

(1) any deviations from the drawings and specifications included in the final remediation plan;

(2) a tabulation of pertinent data including but not limited to flow rates, pressures, temperatures, and contaminant concentrations and groundwater elevations at start-up, and boring logs and well completion diagrams; and

(3) information and documentation of purchased major remediation equipment including, but not limited to serial number, model and manufacturer, description, warranty information, operating manuals, maintenance requirements and purchase price.

[20.5.119.1925 NMAC - N, 07/24/2018]

20.5.119.1926 QUARTERLY REPORTS ON THE REMEDIATION:

A. Owners and operators shall submit paper and electronic copies of written reports to the department on the operation of the remediation system. Owners and operators shall submit the reports quarterly unless a different reporting period is approved by the department, shall document all work performed during the preceding interval, and shall include the following information, as appropriate:

(1) tabulation of the current and historical results of all water quality analyses and water elevation data;

(2) evaluation of the performance and efficiency of each aspect of the remediation:

(a) the evaluation and all adjustments to system operation shall be performed, as appropriate, under the direct, responsible, supervisory control of an authorized representative of the qualified firm and a professional engineer; and

(b) owners and operators shall submit evidence that the performance of the remediation system meets the operating standards outlined in the final remediation plan;

(3) verification based on calculations that the schedule is being met for source removal, protection of actual and potential receptors, achievement of target concentrations, quarterly and cumulative contaminant mass reduction totals to date in pounds and gallons of contaminants;

(4) records of system operation, including but not limited to, periods of shut-down and equipment malfunctions; the maintenance procedures performed on the remediation system during the preceding quarter, including the names of the individuals performing the maintenance; and an operation and maintenance schedule for the next

quarter;

(5) NAPL recovery, both cumulative and quarterly, and details of its disposal;

(6) effluent vapor concentrations over time;

(7) evaluation and recommendations for improving the performance of the system to achieve the goals of remediation; and

(8) other information required by the department.

B. Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department. [20.5.119.1926 NMAC - N, 07/24/2018]

20.5.119.1927 ANNUAL EVALUATION OF REMEDIATION:

A. Owners and operators shall evaluate the effectiveness of the approach to remediation at the end of each year of operation and submit the evaluation to the department for review.

B. When the department determines that the approach to remediation is not effectively remediating contamination according to the identified risks to public health, safety and welfare and the environment, owners and operators shall propose an alternative approach or change in the existing remediation plan within 30 days of the department's determination of ineffectiveness. Within 30 days of the department's approval, owners and operators shall implement the approved changes.

C. After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section until monitoring to verify completion of remediation in accordance with 20.5.119.1929 NMAC commences. [20.5.119.1927 NMAC - N, 07/24/2018]

20.5.119.1928 MODIFICATION OF FINAL REMEDIATION PLAN:

A. Owners and operators may petition the department to approve a modification of the final remediation plan for good cause.

B. The department may modify a final remediation plan only if it complies with applicable regulations, provides adequate protection of public health, safety and welfare and the environment, and the owner and operator comply with the public notice requirements of 20.5.119.1923 NMAC.

[20.5.119.1928 NMAC - N, 07/24/2018]

20.5.119.1929 COMPLETION OF REMEDIATION:

A. The department shall consider remediation complete when all of the following criteria are met:

(1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

(2) the EIB standard of 0.1 mg/L for methyl tertiary butyl ether (MTBE) has been met in groundwater and surface water;

(3) all applicable site-specific target levels or risk-based screening levels in soil and WQCC and EIB standards in groundwater have been achieved;

(a) all electrical and mechanical components of the remediation system shall remain shut down during the monitoring period described in this subsection;

(b) the department shall approve the designation of certain monitoring wells as compliance wells; the applicable standards shall be achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise as approved by the department; and

(c) for verification of remediation of soil to target concentrations, owners and operators shall install at least four soil borings, at least three of which are distributed throughout the previously most contaminated portion of the vadose zone, as approved by the

department;

(4) corrective action requirements for total petroleum hydrocarbons determined in accordance with 20.5.119.1914 NMAC have been met; and

(5) any other conditions which threatened public health, safety and welfare or the environment have been abated or remediated.

B. If any of the conditions of Paragraphs (1) through (5) of Subsection A of this section are not met, the department may require owners and operators to perform additional remediation.

C. Notwithstanding the conditions in Subsection A of this section, owners and operators may continue to operate the mechanical and electrical components of the remediation system when it is effectively reducing contaminant concentrations, as determined and approved by the department.

D. Termination of remediation in accordance with this section does not relieve the owner and operator of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

E. Following department approval, owners and operators shall decommission the electrical and mechanical components of the remediation system and properly abandon wells that are no longer needed for remediation or monitoring, in accordance with federal, state and local laws and regulations.

[20.5.119.1929 NMAC - N, 07/24/2018]

20.5.119.1930 NO FURTHER ACTION DETERMINATION:

A. A no further action determination is a technical determination issued by the department that documents that the owner or operator of a site has met all applicable WQCC and EIB remediation standards and that no contaminant will present a significant risk of harm to public health, safety and welfare and the environment.

B. Any owner or operator may request that the department evaluate a site for a no further action determination by submitting a written request to the department. The request shall include the following, if requested by the department:

(1) description of the site including a historical overview and generalized description of businesses, structures, vegetation, other prominent features, and location of the site;

(2) surveyed plat of the site, site map with legal description, or both;

(3) completed current environmental conditions table listing all areas of environmental concern on the site subject to remediation; the table shall include the following information about each area of environmental concern:

(a) remedial action taken, date, regulatory agency;

(b) residual contaminants of concern;

(c) clean-up status; and

(d) clean-up standards for contaminants of concern;

(4) chronology of events for each area investigated or remediated; and

(5) other relevant documents, as requested by the department.

C. Owners and operators shall receive approval of a request for a no further action determination for the release when all of the following conditions are met:

(1) groundwater and surface water contamination related to the release is less than or equal to WQCC and EIB standards, and where there had been groundwater contamination related to the release, the applicable standards have been achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise approved by the department;

(2) soil contamination is less than or equal to

applicable RBSLs or SSTLs, unless otherwise approved by the department under Subparagraph (c) of Paragraph (3) of Subsection A of 20.5.119.1929 NMAC; and

(3) any other conditions which did threaten public health, safety and welfare or the environment have been adequately mitigated.

D. Owners and operators shall receive approval of a request for no further action determination for the release when subsurface water does not meet the definition of "subsurface water" in 20.6.2.7 NMAC or is unprotected pursuant to Subsection A of 20.6.2.3101 NMAC, if NAPL and contaminant saturated soil have been adequately remediated in accordance with this part and any other conditions which threatened public health, safety and welfare or the environment have been adequately mitigated.

E. Upon completion of an assessment by the department that a site qualifies for a no further action determination, the department shall issue a no further action determination letter.

F. Any of the following may result in a reversal of a no further action determination:

(1) new information becomes available or circumstances arise indicating that an unacceptable risk to public health, safety and welfare or the environment exists; or

(2) a change in use or reasonable foreseeable future use of land or resources, including a change from less sensitive land use to more sensitive land use, such as from commercial or industrial to residential, and including the drilling of water supply wells in the vicinity of remaining contamination.

[20.5.119.1930 NMAC - N, 07/24/2018]

20.5.119.1931 REQUEST FOR EXTENSION OF TIME:

A. For good cause shown, the department may extend the time for complying with any deadline set forth in this part. The

request shall specify the reason for the request, all actions taken to comply with the deadline and the period of time for which the extension is requested.

B. The department shall not grant an extension for more than 30 days at a time unless the department determines additional time is warranted. The department may place conditions on the extension.

C. Lack of diligence or failure of owners and operators to comply with these regulations shall be grounds for denying a request for an extension of time.
[20.5.119.1931 NMAC - N, 07/24/2018]

20.5.119.1932 RECORD KEEPING AND RETENTION:

A. Owners and operators of petroleum storage tanks where a release has occurred shall retain records documenting compliance with all applicable requirements of 20.5.119 NMAC. If the owner and operator of a petroleum storage tank are separate persons, only one person is required to maintain the records required by this section however both parties are liable in the event of non-compliance.

B. Records to be maintained shall include, but not be limited to:

- (1) 72-hour report;
- (2) 14-day report;
- (3) NAPL Assessment report;
- (4) interim removal of contaminated soil report;
- (5) minimum site assessment, preliminary investigation report;
- (6) secondary investigation report;
- (7) soil-only contamination assessment report;
- (8) petroleum vapor intrusion assessment report;
- (9) final remediation plan;
- (10) groundwater monitoring reports;
- (11) operation

and maintenance reports.

C. Records shall be maintained for a minimum period of 10 years following a no further action determination as set forth in 20.5.119.1930 NMAC.
[20.5.119.1932 NMAC - N, 07/24/2018]

20.5.119.1933 REPORTING:

A. Owners and operators shall provide to the department all reports as required in 20.5.119 NMAC in accordance with the timeline or deadlines set forth as stated in 20.5.119.1900 NMAC.

B. Owners and operators shall ensure all reports, plans and requests required in 20.5.119 NMAC contain at a minimum, in addition to the requirements set forth in 20.5.119.1902, 20.5.119.1903, 20.5.119.1905, 20.5.119.1906, 20.5.119.1909, 20.5.119.1911, 20.5.119.1912, 20.5.119.1913, 20.5.119.1915, 20.5.119.1918, 20.5.119.1922, 20.5.119.1923, 20.5.119.1926, 20.5.119.1927, 20.5.119.1930 and 20.5.119.1931 NMAC:

- (1) release name and address;
- (2) facility identification and release identification numbers;
- (3) workplan and deliverable identification numbers as applicable;
- (4) owner and operator name and address, and
- (5) date report was completed.

[20.5.119.1933 NMAC - N, 07/24/2018]

HISTORY OF 20.5.119 NMAC: Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives. EIB/USTR 12, Underground Storage Tank Regulations - Part XII - Corrective Action for Petroleum UST Systems, filed 6/13/90.

History of Repealed Materials:

20 NMAC 5.12, Environmental Protection, Underground Storage Tanks, Corrective Action for UST Systems Containing Petroleum Products (filed 10/6/95), repealed 2/2/00.

20 NMAC 5.12, Corrective Action for UST Systems Containing Petroleum Products (filed 12/30/99), repealed 8/15/03.

20.5.12 NMAC, Corrective Action for Storage Tank Systems Containing Petroleum Products (filed 7/16/03), repealed 6/15/09.

20.5.12 NMAC, Petroleum Storage Tanks, Corrective Action for Storage Tank Systems Containing Petroleum Products (filed 6/15/09), repealed 7/24/18.

Other History:

EIB/USTR 12, Underground Storage Tank Regulations - Part XII - Corrective Action for Petroleum UST Systems, (filed 6/13/90) was renumbered, reformatted and replaced by 20 NMAC 5.12, Underground Storage Tanks, Corrective Action for UST Systems Containing Petroleum, effective 11/05/95.

20 NMAC 5.12, Underground Storage Tanks, Corrective Action for UST Systems Containing Petroleum, (filed 10/06/95) was replaced by 20 NMAC 5.12, Corrective Action for UST Systems Containing Petroleum Products, effective 2/2/00.

20 NMAC 5.12, Corrective Action for UST Systems Containing Petroleum Products, (filed 12/30/99) was renumbered, reformatted and replaced by 20.5.12 NMAC, Corrective Action for Storage Tank Systems Containing Petroleum Products, effective 8/15/03.

20.5.12 NMAC, Corrective Action for Storage Tank Systems Containing Petroleum Products (filed 7/16/03) was replaced by 20.5.12 NMAC, Corrective Action for Storage Tank Systems Containing Petroleum Products, effective 6/15/09.

20.5.12 NMAC, Corrective Action for Storage Tank Systems Containing Petroleum Products (filed 6/15/09) was reformatted, renumbered, and replaced by 20.5.119 NMAC, Petroleum Storage Tanks, Corrective Action for Storage Tank Systems

Containing Petroleum Products,
effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

TITLE

**20 ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 120 CORRECTIVE
ACTION FOR UST SYSTEMS
CONTAINING OTHER
REGULATED SUBSTANCES**

20.5.120.1 ISSUING

AGENCY: New Mexico
Environmental Improvement Board.
[20.5.120.1 NMAC - N, 07/24/2018]

20.5.120.2 SCOPE: This part applies to owners and operators of hazardous substance UST systems as defined in 20.5.101 NMAC. If the owner and operator of an UST system are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.
[20.5.120.2 NMAC - N, 07/24/2018]

20.5.120.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.
[20.5.120.3 NMAC - N, 07/24/2018]

20.5.120.4 DURATION:

Permanent.
[20.5.120.4 NMAC - N, 07/24/2018]

20.5.120.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.120.5 NMAC - N, 07/24/2018]

20.5.120.6 OBJECTIVE: The purpose of this part is to provide for corrective action at sites contaminated by releases from hazardous substance UST systems and to protect the public health, safety and welfare and the environment of the state.
[20.5.120.6 NMAC - N, 07/24/2018]

20.5.120.7 DEFINITIONS: The definitions in 20.5.101 NMAC apply to this part.
[20.5.120.7 NMAC - N, 07/24/2018]

20.5.120.8 to 20.5.120.1999 [RESERVED]

20.5.120.2000 GENERAL:
A. Owners and operators of hazardous substance UST systems shall take corrective action to address all releases, including such action as collection and analysis of relevant site-specific data, soil remediation, groundwater and surface water remediation and any other appropriate actions pursuant to this part, in a manner protective of public health, safety and welfare and the environment.

B. Upon confirmation of a release pursuant to 20.5.118.1802 NMAC or identification and reporting of a release in any other manner, owners and operators of hazardous substance UST systems shall comply with the requirements of this part if the release:

(1) is of unknown volume or is greater in volume than the reportable quantity under 40 C.F.R. Part 302; or
(2) is of any size and the owner or operator is directed by the department to comply with this part.

C. Owners and operators shall maintain and provide to the department all reports required in 20.5.120.2029 and 20.5.120.2030 NMAC.

D. Owners and

operators shall mail or deliver and provide paper and electronic copies of all written notices and reports required under this part to be submitted to the department to the owner or operator's assigned project manager from the petroleum storage tank bureau, New Mexico environment department.

E. Owners and operators shall comply with any site-specific timeline or deadline that is approved in writing by the department at the time of workplan approval. If no applicable site-specific timeline has been approved, the following timeline shall apply to all corrective action requirements under this part. The time deadlines set forth in this part are computed from the date of reporting of a release or of reporting of the confirmation of a suspected release pursuant to 20.5.118.1800 NMAC unless another event is specified in these rules.

**Continued on the
following page**

Default Corrective Action Timeline

Deadline, in days from report:	Action or deliverable due date, as defined above:
0	report discovery or confirmation of a release
3	72-hour report
14	14-day report
60	submit NAPL assessment
60	initiate interim removal of contaminated soil
60	preliminary investigation report
120	secondary investigation report
When monitored natural attenuation is used:	
510	monitored natural attenuation (MNA) plan
570	implementation of MNA
935	first annual MNA monitoring report
935	annual evaluation of MNA report
When other remediation is used:	
510	conceptual remediation plan
540	final remediation plan
600	implementation of remediation
690	first quarterly monitoring report
965	annual evaluation of remediation system report

F. All owners and operators are responsible for compliance with all provisions of this part. An owner or operator may designate a representative to facilitate compliance with this part. The designation of such a representative shall not affect the department's right to seek compliance at any time from the owner or the operator or both. The designation of a representative is intended to facilitate compliance with this part and shall not relieve the owner and operator of their legal liabilities or responsibilities under this part.

G. Except for 20.5.120.2001, 20.5.120.2002 and 20.5.120.2003 NMAC, owners and operators shall submit to the department written workplans for all corrective action under this part. Owners and operators may submit workplans in stages to reflect the sequence or types of corrective action described in 20.5.120 NMAC at the site, but the owners and operators shall submit all workplans to and obtain approval by the department in writing for technical adequacy before the corrective action is commenced.

H. Unless otherwise approved, a qualified firm as specified in 20.5.122 NMAC shall perform all corrective action and, when required by the rules in Title 20, Chapter 5 NMAC, a professional engineer as defined in 20.5.101.7 NMAC.

(1) All contractors and their subcontractors shall have appropriate licenses and certifications and be in compliance with applicable local, state and federal laws and regulations, including but not limited to the rules in Title 16, Chapter 39 NMAC governing engineers, 14.6.3 NMAC governing contractors and, 29 CFR part 1910 governing worker health and safety.

(2) Owners and operators shall identify all prime contractors and all subcontractors in all workplans submitted to the department.

I. Where site conditions are amenable, owners and operators may use accelerated site characterization techniques if pre-approved by the department.

J. All monitoring wells shall be permitted in conformance with all applicable federal, state and local laws, regulations and ordinances in effect at the time of installation.

K. Owners and operators shall clearly mark and secure monitoring wells and major remediation equipment to prevent unauthorized access, tampering. Owners and operators shall close or abandon all wells in accordance with the requirements of applicable federal, state and local laws and regulations in effect at the time the workplan was approved.

L. If a release constitutes a hazardous substance incident under the provisions of the Hazardous Waste Act relating to hazardous substance incidents, those provisions may apply in addition to this part.

M. The department shall notify owners and operators taking corrective action and contractors of state-lead sites in writing when it has determined that a deliverable completed under an approved workplan is satisfactory. The written notice shall also inform the owner, operator or contractor that any application for payment from the fund of

costs associated with the approved deliverable must be received by the department within 90 days of the date the owner, operator or contractor received written notice of approval and that the department shall not grant extensions of the deadline except for good cause as shown pursuant to 20.5.123.2318 NMAC.

[20.5.120.2000 NMAC - N, 07/24/2018]

[The address of the department's Petroleum Storage Tank Bureau, Remedial Action Program, is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.120.2001 MINIMUM SITE ASSESSMENT, INITIAL RESPONSE:

A. Upon discovery or confirmation of a release, owners and operators of the UST system shall immediately prevent any further release from the UST system by whatever means necessary, including removing product from the UST system or any part of the UST system that is known to leak or is suspected of leaking. If necessary, owners and operators shall remove the UST system from service in accordance with 20.5.115 NMAC.

B. Owners and operators shall inform the department in accordance with 20.5.118.1800 NMAC of any release and action taken to mitigate immediate damage from the release.

[20.5.120.2001 NMAC - N, 07/24/2018]

20.5.120.2002 MINIMUM SITE ASSESSMENT, INITIAL ABATEMENT:

A. Owners and operators shall undertake the initial abatement and site investigation actions specified in this section within 72 hours of discovery or confirmation of a release pursuant to 20.5.118 NMAC, using the default timeline as set forth in Subsection E of 20.5.120.2000 NMAC or as otherwise approved by the department.

B. Owners and operators shall identify the location and details of construction of all

private water supply wells, using readily accessible public records, within a 1,000-foot radius, and all public water supply wells within a one mile radius of the UST system, and shall determine if the identified wells lie within a designated wellhead protection area. Owners and operators shall take appropriate measures to protect these water supplies from contamination.

C. Owners and operators shall contain or remediate releases which present an imminent threat of contamination to or are within 500 feet of a surface water course as soon as practicable to prevent contamination of surface water. If the surface water course is a drinking water supply, within 24 hours owners and operators shall notify the owners or operators of all drinking water supplies likely to be affected by the release.

D. If the release has contaminated a water supply, owners and operators shall immediately provide a temporary replacement drinking water supply, as well as adequate warnings or other mechanisms to prevent persons from drinking or otherwise contacting water contaminated by the release. Within seven days of discovery or confirmation of a release pursuant to 20.5.118 NMAC that has contaminated a water supply, owners and operators shall provide a replacement water supply which is of adequate quality and quantity for drinking, bathing, cooking and washing. Owners and operators shall maintain the replacement water supply until an alternate water supply sufficient for all domestic purposes is available.

E. Owners and operators shall identify the depth, location, composition and construction of all underground utilities including water lines, sewer lines, communication cables, electric lines, and natural gas lines within the area of the release to assess the susceptibility of these utilities to permeation by contaminants or deterioration caused by contaminants. Owners and operators shall notify

the utility owner that the release has occurred and obtain permission to perform a site check of the utilities or other subsurface structures most likely to be contaminated by the release to determine whether NAPL or vapors are present.

F. Owners and operators shall complete an investigation to determine whether potentially explosive or harmful vapors are present in any building, utility corridor, basement, or other surface or subsurface structure on or adjacent to the release site.

(1) The investigation shall include testing for vapors using the following:

(a) a combustible gas indicator or equivalent instrument calibrated according to the manufacturer's instructions to test for potentially explosive levels of vapors; and

(b) a photoionization detector, flame ionization detector or another method approved by the department calibrated according to the manufacturer's instructions to test for potentially harmful vapors.

(2) In the event owners and operators discover potentially explosive levels of vapors greater than 10 percent of the lower explosive limit (LEL) or potentially harmful vapors reading greater than five whole units above ambient concentrations in any structure in the vicinity of the release site, owners and operators shall take immediate action to mitigate the vapor hazard. Within seven days of the discovery of the vapors, owners and operators shall install and place into operation a vapor mitigation system capable of reducing vapors to safe levels within the shortest reasonable time. The vapor mitigation system shall be designed by and constructed under the direct, responsible, supervisory control of a professional engineer, when required by the department.

(a) Once a vapor mitigation system has been installed, owners and operators shall monitor and report in writing to the department the levels of vapors

in the affected structures weekly for the first month and monthly thereafter unless a different monitoring schedule is approved in writing by the department. This monitoring shall be performed in accordance with Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

(b)

After the vapor mitigation system has been in operation for three months, owners and operators shall have 30 days to submit to the department a written summary report containing the monitoring results. The department may direct owners and operators to modify the vapor mitigation system as necessary to reduce vapors to safe levels. Owners and operators shall submit monitoring results to the department at three-month intervals until operation of the vapor mitigation system is discontinued in accordance with this section.

(3) Owners

and operators shall continue to operate the vapor mitigation system until the results of three consecutive monthly monitoring events indicate the following:

(a)

levels of vapors are less than ten percent LEL; and

(b)

levels of vapors are less than or equal to five whole instrument units above ambient levels in any structure in the vicinity of the release site when measured as required in Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

(4) When

operation of a vapor mitigation system is discontinued, owners and operators shall monitor the vapor levels in the structure weekly for the first month and monthly thereafter until one calendar year has passed, or as otherwise approved by the department. If during this period the levels exceed those set forth in Subparagraphs (a) and (b) of Paragraph (3) of this subsection, owners and operators shall notify the department and take the necessary corrective action, as directed by the department.

G. Owners and

operators shall remove any exposed hazardous substances related to the release and mitigate any related immediate fire and safety hazards as soon as possible, but in no case no later than 72 hours after the confirmation or other identification of the release.

[20.5.120.2002 NMAC - N, 07/24/2018]

20.5.120.2003 MINIMUM SITE ASSESSMENT, 72-HOUR AND 14-DAY REPORTS:

A. Owners and operators shall make an oral report summarizing the abatement procedures undertaken and the results of action taken under 20.5.120.2001 and 20.5.120.2002 NMAC within 72 hours of the discovery or confirmation of a release pursuant to 20.5.118 NMAC.

B. Owners and operators shall submit a paper and electronic copy of a written report to the department within 14 days of the discovery or confirmation of a release pursuant to 20.5.118 NMAC in addition to the written notice required under 20.5.118 NMAC. This report shall summarize all the work performed pursuant to 20.5.120.2001 and 20.5.120.2002 NMAC and shall include the following information, as appropriate:

(1) a map based on a United States geologic survey topographic map showing locations of actual and potential receptors, including, but not limited to, private and public water supplies identified pursuant to Subsection B of 20.5.120.2002 NMAC; owners and operators shall draw two concentric circles, at 1,000 feet and at one mile radii from the center of the release, and shall also show on the map all surface water courses within a one mile radius of the site;

(2) information about any water supplies known or suspected to have been contaminated by the release;

(3) most likely direction of groundwater flow;

(4) a site plan map showing locations of utilities,

surface structures and storage tank systems;

(5) information about underground utilities gathered in accordance with Subsection E of 20.5.120.2002 NMAC;

(6) soil borings, logs, and details of construction of all wells, if available;

(7) description of any actions taken to abate adverse effects;

(8) data from vapor monitoring performed in the vicinity of the site;

(9) description of any actions taken to abate potentially explosive or harmful vapors and any plans for further action;

(10) description of fire and safety hazards resulting from the release and actions taken to abate such hazards;

(11) description of current and past ownership of the property, UST systems, the substance stored in the system, age of tank and history of any tank removals;

(12) present land use, within 1,000 feet of the site; and

(13) records of tightness tests, repairs to the UST system, release detection and monitoring results.

[20.5.120.2003 NMAC - N, 07/24/2018]

20.5.120.2004 NOTICE, SPLIT SAMPLES AND SAMPLING PROCEDURES:

A. Except for the 72-hour vapor check, owners and operators shall notify the department at least four days prior to the collection of any samples which are required pursuant to this part and upon which laboratory analyses are to be performed to allow the department an opportunity to be present at the collection of samples or to split samples.

B. Owners and operators shall notify the department at least four days prior to the decommissioning, destruction or

abandonment of any wells.

C. Owners and operators shall collect, store and transport all samples necessary to comply with the requirements of this part in a manner consistent with the nature of the known or suspected and in conformance with applicable federal, state and local laws and regulations.

[20.5.120.2004 NMAC - N, 07/24/2018]

20.5.120.2005 INTERIM REMOVAL OF NON-AQUEOUS PHASE LIQUID:

A. Owners and operators shall assess the potential for remediation of non-aqueous phase liquid (NAPL) where there is a thickness of greater than one-eighth inch of NAPL in surface water, in any excavation pit, or in any well. Owners and operators shall submit the assessment to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

B. The department may approve interim removal of NAPL when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment. In this event, owners and operators shall remove NAPL in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

C. Owners and operators shall remove NAPL in a manner that minimizes the spread of contamination into uncontaminated media.

D. Owners and operators shall store and dispose of NAPL in accordance with all flammable and combustible liquids codes approved by the state fire marshal or other local authority, state hazardous waste regulations 20.4.1 NMAC, and any other applicable laws or regulations.

E. Owners and operators shall report recovery and disposal of NAPL to the department. [20.5.120.2005 NMAC - N,

07/24/2018]

20.5.120.2006 INTERIM REMOVAL OF CONTAMINATED SOIL:

A. Owners and operators shall remediate contaminated soil in accordance with 20.5.120.2018 and 20.5.120.2026 NMAC, unless approved by the department to remove and treat contaminated soil in accordance with this section.

(1) The department may approve interim removal of contaminated soil when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment.

(2) Under this section, owners and operators shall excavate, treat and dispose of contaminated soil using methods approved by the department, in compliance with local laws and regulations, and under a timeline approved by the department or the timeline in Subsection E of 20.5.120.2000 NMAC.

(3) The department shall approve the vertical and horizontal extent of soil to be excavated.

B. When treating or temporarily storing soil on site, owners and operators shall:

(1) for treatment on site, spread soil in a six-inch layer over an impervious liner or other surface approved by the department to prevent infiltration to groundwater and place the layer of soil on level ground and berm to prevent runoff from contaminating other soil or surface water;

(2) for temporary storage, place the soil in a secure, bermed area on an impervious liner or surface or in a secured and properly labeled container, as approved by the department; and

(3) handle soil in a manner that does not contaminate groundwater, surface water or other uncontaminated soil or does not create or cause a public nuisance or threat to human health, safety and welfare or

the environment.

C. When contaminated soil is taken off site, owners and operators shall provide the department with the following information within 14 days of removal of the soil from the site:

(1) written documentation of the type and concentration of contaminants, volume and weight of soil, method of treatment, date transported, and location of the site of disposal or treatment;

(2) a signed, written statement by the owner of the treatment or disposal site describing the location of the site and expressly accepting the contaminated soil; and

(3) if contaminated soil is taken to a permitted solid or hazardous waste facility, a manifest signed by the generator, transporter and the owner or operator of the solid waste facility.

D. Remediation shall be considered complete when the requirements in 20.5.120.2026 NMAC are met.

E. In accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC, owners and operators shall submit to the department a report describing the removal and treatment of contaminated soil.

(1) The report shall describe the soil removal action and its effectiveness, including volumes and weight removed.

(2) Owners and operators shall submit the report within 30 days of the soil removal action.

[20.5.120.2006 NMAC - N, 07/24/2018]

20.5.120.2007 MINIMUM SITE ASSESSMENT, PRELIMINARY AND OTHER REQUIRED INVESTIGATIONS:

A. A preliminary investigation is not required when owners and operators can demonstrate that the contamination has not reached groundwater and one of the following two conditions apply:

(1) the release is remediated in accordance with this part within 72 hours of discovery or confirmation; or

(2) the release is permanently contained within the excavation area.

B. If the contamination extends beyond the boundaries of the property where the release originated, owners and operators shall conduct a secondary investigation in accordance with 20.5.120.2010 NMAC. [20.5.120.2007 NMAC - N, 07/24/2018]

20.5.120.2008 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION -

REQUIREMENTS: Owners and operators shall conduct a preliminary investigation in accordance with this Subsection and under a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC. The preliminary investigation shall determine the following, unless otherwise approved by the department.

A. If not previously identified and reported under 20.5.120.2003 NMAC, the preliminary investigation shall determine the regulated substance released or suspected of being released at the site, the media of concern, current and potential receptors, current and anticipated use of property, complete and incomplete exposure pathways, and routes of exposure.

B. The preliminary investigation shall also determine the horizontal and vertical extent and magnitude of soil contamination.

(1) Owners and operators shall conduct a soil boring survey by advancing a continuously cored soil boring at each area of release where soil contamination is most likely to be encountered unless otherwise directed by the department. The initial incident report and a soil vapor survey may be used in locating these areas. Owners and operators shall advance at least one of the borings into the

groundwater saturated zone or, with approval from the department, to a depth at which measured levels of contaminants in soil are no longer detectable by laboratory analysis, and vapor concentrations, as determined with a field instrument, are less than 100 whole instrument units.

(2) Owners and operators shall advance at least four additional soil borings to characterize the release within property boundaries. Borings shall be completed to the depth at which contaminants in soil are no longer detectable by laboratory analysis, and vapor concentrations, as determined with a field instrument, are less than 100 whole instruments units. If the soil borings indicate that contaminated soil extends beyond the boundary of the property on which the storage tank system is located, owners and operators shall advance soil borings sufficient to characterize the extent and magnitude of contamination within site boundaries.

(3) The preliminary investigation shall assess, at five-foot intervals, field estimates of concentrations of contaminants of concern in the soil borings and select and prepare samples for laboratory analysis.

(4) Owners and operators shall gather field data for soil classification, determining and recording color, grain size, texture, description of lithification, plasticity and clay content.

(5) The preliminary investigation shall include derived values for soil bulk density (g/cc), soil moisture content (percent by mass), and effective porosity, and fraction organic carbon content (percent by mass) using samples taken from an uncontaminated area of the vadose zone.

(6) The preliminary investigation shall delimit the horizontal and vertical extent of contaminant saturated soil as defined in 20.5.101.7 NMAC.

C. The preliminary investigation shall determine whether groundwater or surface water has been contaminated above

applicable standards or whether a potential for groundwater or surface water contamination is present by performing the following:

(1) install at least three groundwater monitoring wells at locations where the results of the soil boring survey conducted pursuant to this section indicate that groundwater may be contaminated; owners and operators shall:

(a) locate monitoring wells so that groundwater gradient can be determined;

(b) install at least one monitoring well on site in the area of highest contamination as determined by the soil borings installed in conformance with the initial incident report and other relevant information;

(c) install one of the monitoring wells in the estimated down-gradient direction from the area of highest contamination;

(d) construct wells in accordance with all applicable federal, state and local laws and regulations; and

(e) survey the wells using a New Mexico licensed professional surveyor, in decimal degrees of latitude and longitude in accordance with NAD 83;

(2) calculate the direction and gradient of groundwater flow;

(3) inspect all monitoring wells for the presence of NAPL using a method approved by the department; if NAPL is present in any well, measure the apparent thickness, delimit its horizontal extent, and initiate recovery procedures in accordance with 20.5.120.2005 NMAC; and

(4) sample each monitoring well that does not contain NAPL and analyze the sample for contaminants of concern to determine whether:

(a) immediate mitigation procedures are warranted; and

(b)

other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.120.2002 NMAC by:

(i) identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.120.2002 NMAC;

(ii) checking for the presence of vapors in accordance with 20.5.120.2002 and 20.5.120.2008 NMAC; and

D. Owners and operators shall identify all other hazards and potential threats to public health, safety and welfare and the environment which may exist as a result of the release to determine if:

(1) immediate mitigation procedures are warranted; and

(2) other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.120.2003 NMAC by:

(a) identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.120.2002 NMAC.

(b) checking for the presence of vapors in accordance with 20.5.120.2002 and 20.5.120.2008 NMAC. [20.5.120.2008 NMAC - N, 07/24/2018]

20.5.120.2009 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION REPORT:

A. Owners and operators shall submit paper and electronic copies of a written report of the preliminary investigation and other requirements of the minimum site assessment as defined in 20.5.101.7 NMAC in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC. The report shall include the information gathered under 20.5.120.2001,

20.5.120.2002, 20.5.120.2003 and 20.5.120.2007 NMAC and shall conform to the requirements of this section and 20.5.120.2008 NMAC.

B. Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

C. The minimum site assessment report shall at a minimum, include all pertinent data collected during the minimum site assessment investigation, interpretation of that data using cross sections, contoured maps that depict the magnitude and extent of all contaminated media, identification of any threatened receptors, recommendations for additional work and justification for the recommended work.

D. The department shall review the report and notify owners and operators of any inadequacies in the report within 30 days of receipt. Owners and operators shall, in accordance with a timeline approved by the department, correct the report and resubmit it to the department for review and written approval. If the revised report does not conform to the minimum site assessment, preliminary investigation requirements in this section and 20.5.120.2008 NMAC, the department shall reject the report and owners and operators shall be determined not to have conducted a minimum site assessment for the purposes of Subparagraph (c) of Paragraph (1) of Subsection B of Section 74-6B-8 NMSA 1978. The department's failure to review or to comment on this report shall not relieve owners and operators of their responsibilities under this part or otherwise under the law.

E. Owners and operators shall comply with the requirements of any local government which has designated a wellhead/ source water protection area that includes the area of the release.

F. Owners and operators shall provide notice that

includes the contaminants identified, as well as the horizontal and vertical extent of those contaminants, to all owners of property located within the extent of contamination.

[20.5.120.2009 NMAC - N, 07/24/2018]

20.5.120.2010 SECONDARY INVESTIGATION:

A. Owners and operators shall perform a secondary investigation in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC when the department makes at least one of the following determinations about the site:

(1) the extent and magnitude of contamination in all media has not been delimited by the preliminary investigation; or

(2) the release threatens public health, safety and welfare or the environment.

B. The secondary investigation shall determine the following:

(1) the horizontal and vertical extent and magnitude of soil contamination both on and off site;

(2) the horizontal extent and magnitude of dissolved phase groundwater contamination both on and off site;

(3) the vertical extent and magnitude of dissolved phase groundwater contamination, when site conditions warrant;

(4) characteristics, aerial extent, estimated volume and apparent thickness of NAPL in wells;

(5) the elevation of groundwater and surface water and the gradient, rate and direction of groundwater and surface water flow;

(6) the rate and direction of contaminant migration;

(7) the hydrologic properties of the contaminated portion of the aquifer including hydraulic conductivity, transmissivity and storativity;

the department may require field verification of estimates made from literature;

(8) whether the aquifer is perched;

(9) whether the aquifer is confined or unconfined; and

(10) any other technical information requested by the department which is reasonably necessary to meet the requirements of this part.

[20.5.120.2010 NMAC - N, 07/24/2018]

20.5.120.2011 SECONDARY INVESTIGATION REPORT:

A. Owners and operators shall submit paper and electronic copies of a written report of the secondary investigation to the department in accordance with a timeline approved by the department or the timeline in Subsection E of 20.5.120.2000 NMAC. The report shall include all information gathered under 20.5.120.2010 NMAC and shall conform to the requirements of this part.

B. Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

C. The secondary investigation report shall, at a minimum, include all pertinent data collected during the secondary investigation, interpretation of that data using cross sections, contoured maps that depict the magnitude and extent of all contaminated media, identification of any threatened receptors, recommendations for additional work and justification for the recommended work.

D. The department shall review the report and notify owners and operators of any inadequacies in the report within 30 days of receipt. Owners and operators shall, in accordance with a timeline approved by the department, correct the report and resubmit it

to the department for review and written approval. If the revised report does not meet the requirements of 20.5.120.2010 NMAC, the owner and operator will be in violation of this part until the inadequacies are corrected. The department's failure to review or to comment on the secondary investigation report shall not relieve owners and operators of their responsibilities under this part or otherwise under the law.

E. Owners and operators shall provide notice that includes the contaminants identified, as well as horizontal and vertical extent of those contaminants, to all owners of property located within the extent of contamination who were not previously notified in accordance with 20.5.120.2009 NMAC.

[20.5.120.2011 NMAC - N, 07/24/2018]

20.5.120.2012 MONITORED NATURAL ATTENUATION:

A. If approved by the department, owners and operators shall submit a plan for remediation by monitored natural attenuation to the department if any of the following conditions have been identified at the site:

(1) concentrations of contaminants of concern exceed target concentrations in soil or WQCC or EIB standards in groundwater or surface water; and

(2) other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

B. Owners and operators shall submit the monitored natural attenuation plan in accordance with this section and 20.5.120.2013 NMAC and in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

C. The intent of the monitored natural attenuation plan is to provide a written description of the methodology proposed and demonstrate how the plan will achieve target concentrations in a manner that is practicable, cost effective, and

protective of public health, safety and welfare and the environment. The content of the monitored natural attenuation plan, at a minimum and as appropriate, shall include:

(1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(2) cross sections showing the source contaminant mass in relation to the groundwater contamination;

(3) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(4) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

(5) a schematic drawing depicting the construction details including lithology and screen intervals for the designated monitoring wells;

(6) justification for selecting the designated monitoring wells;

(7) recommended approach to monitoring including an implementation and monitoring schedule, the analytical methods, and the justification for the recommendation;

(8) an estimation of the time necessary for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

(9) a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;

(10) public notice in conformance with the following requirements:

(a) owners and operators shall publish a legal notice of the submission or planned submission of the monitored natural attenuation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release; the first notice shall appear within one week of, but not later than, the day of submission of the monitored natural attenuation plan to the department; the second publication of this notice shall occur no later than seven days after the date the monitored natural attenuation plan is submitted to the department, and owners and operators shall submit two certified affidavits of publication from the newspaper to the department within 21 days after the date the monitored natural attenuation plan is submitted;

(b) the notice shall contain the information specified in this section including the following:

(i) a statement that a monitored natural attenuation plan has been submitted to the department proposing actions to monitor natural attenuation of a release of hazardous substances;

(ii) the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of contaminant plume is located, using adequate identification of the properties, including street addresses if applicable;

(iii) a statement that a copy of the monitored natural attenuation plan and all data and modeling related to the monitored natural attenuation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

(iv) a statement that public comments on the plan must be delivered within 21 days of the publication of the second notice, to the owner or operator's assigned project manager at the petroleum storage tank bureau, New

Mexico environment department, or a district office if approved by the department, and to the secretary of the environment department;

(c) within seven days of the date a monitored natural attenuation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners;

(d) owners and operators shall post a notice of the submission of the monitored natural attenuation plan at the release site within seven days of the submission of the monitored natural attenuation plan; the notice shall contain the information specified in this Subsection and shall be at least eight and on-half inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the monitored natural attenuation plan is approved and implemented; public comments must be received by the department within 21 days of the date of the second publication of the public notice; and

(11) other requirements as directed by the department.
[20.5.120.2012 NMAC - N, 07/24/2018]
[The address of the department's Petroleum Storage Tank Bureau, Remediation Section is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.120.2013 REVIEW AND APPROVAL OF MONITORED NATURAL ATTENUATION PLAN:

A. After the public comment period has ended, the department shall review the plan and shall approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the monitored natural attenuation plan must be postponed due to significant comments from the public, the department must notify owners and operators of such a postponement,

and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

B. The department may approve a monitored natural attenuation plan and impose reasonable conditions.

C. If the department determines that the monitored natural attenuation plan is inadequate, owners and operators shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

D. The department may provide notice of the submission of the monitored natural attenuation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the monitored natural attenuation plan until after a public hearing or meeting is held and a determination is made. Any public hearing or meeting that is held due to significant public interest shall be held within 60 days of determining there is significant public interest.

[20.5.120.2013 NMAC - N, 07/24/2018]

20.5.120.2014 MONITORED NATURAL ATTENUATION PLAN IMPLEMENTATION:

A. Owners and operators shall implement the monitored natural attenuation plan after department approval in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

B. Owners and operators shall monitor the contamination until the department determines that the natural attenuation is complete pursuant to this part, or

unless otherwise approved by the department.

[20.5.120.2014 NMAC - N, 07/24/2018]

20.5.120.2015 REPORTS ON THE MONITORED NATURAL ATTENUATION:

A. Owners and operators shall submit paper and electronic copies of written reports to the department on the progress of the monitored natural attenuation. Owners and operators shall submit the reports annually unless a different reporting period is approved by the department and shall document all work performed during the preceding interval and shall include at a minimum the following information, as appropriate:

(1) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(2) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(3) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

(4) tabulation of the current and historical results of all water quality analyses and water elevation data;

(5) graphs of appropriate scale of the current and historical water quality analyses and water elevation data versus time;

(6) data evaluation and interpretation, and recommendations; and

(7) other information required by the department.

B. Owners and operators shall submit the report

within 30 days of the end of the reporting period or as otherwise approved by the department. [20.5.120.2015 NMAC - N, 07/24/2018]

20.5.120.2016 EVALUATION OF MONITORED NATURAL ATTENUATION PLAN:

A. Owners and operators shall evaluate the effectiveness of the monitored natural attenuation plan at the end of each year of monitoring and submit the evaluation to the department for review unless otherwise approved by the department.

B. When the department determines that the plan is not effectively mitigating contamination according to the identified risks to public health, safety and welfare or the environment, the owner or operator shall propose a change in the existing monitored natural attenuation plan within 30 days of the department's determination of ineffectiveness, or propose an alternative approach to remediation under 20.5.120.2019 NMAC. Within 30 days of the department's approval, the owner or operator shall implement the approved changes.

C. After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section.

[20.5.120.2016 NMAC - N, 07/24/2018]

20.5.120.2017 MODIFICATION OF MONITORED NATURAL ATTENUATION PLAN:

A. Owners and operators may petition the department to approve a modification of the monitored natural attenuation plan for good cause.

B. The department may approve a modification of the monitored natural attenuation plan only if such modification provides adequate protection of public health, safety and welfare and the environment and the owner or operator complies with the public

notice requirements of 20.5.120.2012 NMAC.

[20.5.120.2017 NMAC - N, 07/24/2018]

20.5.120.2018 COMPLETION OF MONITORED NATURAL ATTENUATION:

A. Natural attenuation shall be considered complete when all of the following criteria are met:

(1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

(2) all applicable standards for soil and in groundwater and surface water have been achieved; the applicable standards shall be achieved concurrently at all compliance wells as approved by the department; and

(3) any other conditions which threatened public health, safety and welfare or the environment have been abated.

B. If any of the conditions of Paragraphs (1) through (3) of Subsection A of this section are not met, the department may require the owner or operator to perform additional remediation.

C. Termination of monitored natural attenuation in accordance with this section does not relieve the owner and operator of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

D. Following department approval, and with 30 days' notice unless otherwise approved by the department, owners and operators shall properly abandon wells that are no longer needed for monitoring, in accordance with federal, state and local laws and regulations.

[20.5.120.2018 NMAC - N, 07/24/2018]

20.5.120.2019 CONCEPTUAL REMEDIATION PLAN:

A. If approved by the department, owners and operators shall submit a conceptual remediation plan to the department if any of

the following conditions have been identified at the site:

(1) a thickness of greater than one-eighth inch of NAPL is present in the water, including in any excavation pit, or in any well;

(2) contaminant saturated soil is present;

(3) concentrations of contaminants of concern exceed target concentrations in soil or WQCC or EIB standards in groundwater or surface water; or

(4) other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

B. All remediation plans shall include but are not limited to methods to mitigate, remove or otherwise remediate the contaminant source areas.

C. Owners and operators shall submit the conceptual remediation plan in accordance with this section and with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

(1) The conceptual remediation plan shall provide a written description of all of the methodologies proposed and discuss how the plan will achieve target concentrations and other goals of remedial action in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. Owners and operators shall obtain department approval for the conceptual remediation plan before developing the final remediation plan.

(2) The conceptual remediation plan, at a minimum and as appropriate, shall include:

(a) a concise description of site conditions, including hydrogeology, contaminant characteristics and plume dynamics;

(b) the recommended approach to remediation and justification for the recommendation;

(c)

a clear description of the goals of remediation and the target concentrations to be met in each medium;

(d) a narrative description of the proposed methodologies including a preliminary cost comparison and time lines for achieving goals of remediation;

(e) a cost estimate of implementation including installation, operation and maintenance, and monitoring;

(f) a schematic diagram of the proposed remediation system or treatment area and a narrative description of its operation;

(g) a plan view, to scale, of the site showing locations of the proposed equipment or excavation boundaries in relation to the site's physical features and contaminant plumes;

(h) a description of how the approach will achieve target concentrations and other goals of remediation; and

(i) a description of additional data required to support the conceptual remediation plan and design of the final plan and how it will be collected.

[20.5.120.2019 NMAC - N, 07/24/2018]

20.5.120.2020 FINAL REMEDIATION PLAN:

A. Following department approval of the conceptual remediation plan, owners and operators shall develop a final remediation plan in accordance with this section and shall submit three copies of the final remediation plan to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

B. The design and engineering of any final remediation plan that includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis shall be the responsibility of a professional engineer as defined in 20.5.101.7 NMAC. A professional

engineer shall sign and seal all plans and drawings required pursuant to this section, unless otherwise approved by the department.

C. In order to eliminate the potential to emit regulated substances to the environment, all engineered remediation systems shall be designed, constructed and operated such that malfunction or failure of any integral component results in automatic shutdown of the entire system. Integral components include but are not limited to pumps, blowers, oil-water separators, oxidizer systems, air strippers, filtration systems and computers.

D. All final remediation plans shall, at a minimum, include all of the following:

(1) goals of remediation and target concentrations to be achieved in each medium;

(2) a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing USTs, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

(3) a hydrogeologic cross section showing contaminant mass in relation to the remediation system and a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

(4) an implementation schedule;

(5) engineered plans and specifications in accordance with Subsection E of this section;

(6) a schedule for remediation of the source areas, for protection of receptors, and for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

(7) a design and schedule for system optimization that meets the requirements of 20.5.120.2024 NMAC;

(8) a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;

(9) copies of all permits, permit applications, and property access agreements required to initiate remediation, including, if necessary, permits required by the state engineer, permits for discharge to groundwater or a waste water treatment plant, permits for air emissions or a surface water national pollution discharge elimination system (NPDES) permit;

(10) public notice in conformance with the following requirements:

(a) the owner or operator shall publish a legal notice of the submission or planned submission of the final remediation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release; the first notice shall appear within one week of, but not later than, the day of submission of the final remediation plan to the department; the second publication of this notice shall occur no later than seven days after the date the remediation plan is submitted to the department, and owners and operators shall submit two certified affidavits of publication from the newspaper to the department within 21 days after the date the final remediation plan is submitted;

(b) the notice shall contain the information specified in this section including the following:

(i) a statement that a remediation plan has been submitted to the department proposing actions to remediate a release of hazardous substances;

(ii) the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of the remediation system will be located, using adequate identification of the properties, including street addresses if applicable;

(iii) a statement that a copy of the remediation plan and all data and modeling related to the remediation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

(iv) a statement that public comments on the plan must be delivered, within 21 days of the publication of the second notice, to the owner or operator's assigned project manager at the petroleum storage tank bureau, New Mexico environment department, or a district office if approved by the department, and to the secretary of the environment department;

(c) within seven days of the date a remediation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners;

(d) owners and operators shall post a notice of the submission of the remediation plan at the release site within seven days of the submission of the remediation plan; the notice shall contain the information specified in this Subsection and shall be at least eight and one-half inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the remediation plan is approved and implemented; public comments must be received by the department within 21 days of the date of the second publication of the public notice;

(11) for sites where contaminated media are being removed, a description of the ultimate disposal site of contaminated media, location of excavation and trenching, and method of limiting access by pedestrian and vehicular traffic; and

(12) other requirements as directed by the department.

E. In addition to the requirements of Subsection D of this section, all final remediation plans

shall include:

(1) for engineered systems:

(a) unless otherwise approved by the department, a complete and definitive engineering design for a mechanical, electrical, or constructed system, including drawings, plans, diagrams and specifications which are signed and sealed by a professional engineer;

(b) process and instrumentation diagrams;

(c) mechanical arrangement plans and elevations, drawn to scale, showing proposed wells, manifolds, piping details, instrumentation and sampling ports;

(d) details of vapor or fluid extraction or injection wells, as appropriate, including screen length and placement in relation to ground surface, normal and low water table elevations and geologic strata, screen slot size, depths and specifications of the filter pack and seal, and drilling method;

(e) equipment and parts list and specifications including a spare parts list, performance requirements, maintenance requirements and schedule;

(f) electric power requirements including a one-line diagram and schematics;

(g) operation and maintenance commitments and schedules for all facets of the remediation system; and

(h) all other plans, diagrams and specifications that are necessary to properly construct and operate the remediation system in accordance with the remediation plan including but not limited to requirements for:

(i) trenching and protection from traffic;

(ii) concrete repair and replacement;

(iii) restoration of property; and

(iv) location and protection of underground utilities.

(2) for

excavation and disposal plans:

- (a) plan view of proposed excavation relative to contaminant plume;
- (b) cross-sections of proposed excavation depicting overburden, contaminated material to be removed and backfill;
- (c) volume calculations and slope stability analysis;
- (d) description of excavation and backfill procedure to be performed in conformance with OSHA and ASTM standards and regulations;
- (e) traffic control plan;
- (f) description of post-excavation confirmation sampling;
- (g) proposed final grade plan;
- (h) post-excavation grade survey; and
- (i) all other plans, diagrams and specifications that are necessary including but not limited to requirements for:
 - (i) trenching and protection from traffic;
 - (ii) concrete repair and replacement;
 - (iii) restoration of property; and
 - (iv) location and protection of underground utilities.

[20.5.120.2020 NMAC - N, 07/24/2018]

[The address of the department's Petroleum Storage Tank Bureau, Remediation Section is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.120.2021 REVIEW AND APPROVAL OF FINAL REMEDIATION PLAN:

A. Within 30 days of receipt of the final remediation plan and after the public comment period has ended, the department shall review the plan and shall either approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If

the secretary determines that a decision on the remediation plan must be postponed due to significant comments from the public, the department must notify the owner and operator of such a postponement within 30 days, and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

B. The department may approve a final remediation plan and impose reasonable conditions.

C. If the department determines that the final remediation plan is inadequate, the owner or operator shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

D. The department may provide notice of the submission of the remediation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the final remediation plan until after a public hearing or meeting is held. Any public hearing or meeting that is held due to significant public interest shall be held within 60 days of determining that there is significant public interest.

[20.5.120.2021 NMAC - N, 07/24/2018]

20.5.120.2022 IMPLEMENTATION OF FINAL REMEDIATION PLAN:

A. Owners and operators shall implement the final remediation plan after department approval in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC. Owners and operators shall employ a professional

engineer to ensure conformance with the final remediation plan, including excavation, installation, commissioning and operation of the system.

B. When the remediation plan includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis:

(1) a professional engineer shall supervise conformance with the final remediation plan including installation, commissioning and operation of the system;

(2) owners and operators shall operate the remediation system continuously until the remediation is terminated pursuant to this part, unless otherwise approved by the department; and

(3) owners and operators shall report to the department all interruptions of the operation of the remediation system greater than 72 hours.

C. Owners and operators shall obtain written approval from the department prior to implementing any change to the department-approved engineering design.

D. Following implementation of the final remediation plan, the owner or operator shall submit an "as-built" report signed and sealed by the project professional engineer including:

(1) any deviations from the drawings and specifications included in the final remediation plan;

(2) a tabulation of pertinent data including but not limited to flow rates, pressures, temperatures, contaminant concentrations and groundwater elevations at start-up, and boring logs and well completion diagrams; and

(3) information and documentation purchased major remediation equipment including, but not limited to, serial number, model and manufacturer, description, warranty information, operating manuals, maintenance requirements and

purchase price.
[20.5.120.2022 NMAC - N,
07/24/2018]

20.5.120.2023 QUARTERLY REPORTS ON THE REMEDIATION:

A. Owners and operators shall submit written reports to the department on the operation of the remediation system. Owners and operators shall submit the reports quarterly unless a different reporting period is approved by the department, shall document all work performed during the preceding interval, and shall include the following information, as appropriate:

(1) tabulation of the current and historical results of all water quality analyses and water elevation data;

(2) evaluation of the performance and efficiency of each aspect of the remediation:

(a) the evaluation and all adjustments to system operation shall be performed, as appropriate, under the direct, responsible, supervisory control of an authorized representative of the qualified and a professional engineer; and

(b) owners and operators shall submit evidence that the performance of the remediation system meets the operating standards outlined in the final remediation plan;

(3) verification based on calculations that the schedule is being met for source removal, protection of actual and potential receptors, achievement of target concentrations, quarterly and cumulative contaminant mass reduction totals to date in pounds and gallons of contaminants;

(4) records of system operation, including but not limited to, periods of shut-down and equipment malfunctions; the maintenance procedures performed on the remediation system during the preceding quarter, including the names of the individuals performing the maintenance; and an operation and maintenance schedule for the next

quarter;

(5) NAPL recovery, both cumulative and quarterly, and details of its disposal;

(6) effluent vapor concentrations over time;

(7) evaluation and recommendations for improving the performance of the system to achieve the goals of remediation; and

(8) other information required by the department.

B. Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.
[20.5.120.2023 NMAC - N,
07/24/2018]

20.5.120.2024 ANNUAL EVALUATION OF REMEDIATION:

A. Owners and operators shall evaluate the effectiveness of the approach to remediation at the end of each year of operation and submit the evaluation to the department for review.

B. When the department determines that the approach to remediation is not effectively remediating contamination according to the identified risks to public health, safety and welfare or the environment, owners and operators shall propose an alternative approach or change in the existing remediation plan within 30 days of the department's determination of ineffectiveness. Within 30 days of the department's approval, owners and operators shall implement the approved changes.

C. After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section until monitoring to verify completion of remediation in accordance with 20.5.120.2026 NMAC commences.
[20.5.120.2024 NMAC - N,
07/24/2018]

20.5.120.2025 MODIFICATION OF FINAL REMEDIATION

PLAN:

A. Owners and operators may petition the department to approve a modification of the final remediation plan for good cause.

B. The department may modify a final remediation plan only if it complies with applicable regulations, provides adequate protection of public health, safety and welfare and the environment, and the owners and operators comply with the public notice requirements of 20.5.120.2020 NMAC.

[20.5.120.2025 NMAC - N,
07/24/2018]

20.5.120.2026 COMPLETION OF REMEDIATION:

A. The department shall consider remediation complete when all of the following criteria are met:

(1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

(2) all applicable standards for soil, groundwater and surface water have been achieved;

(a) all electrical and mechanical components of the remediation system shall remain shut down during the monitoring period described in this subsection;

(b) the department shall approve the designation of certain monitoring wells as compliance wells; the applicable standards shall be achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise as approved by the department; and

(c) for verification of remediation of soil to target concentrations, owners and operators shall install at least four soil borings, at least three of which are distributed throughout the previously most contaminated portion of the vadose zone, as approved by the department; and

(3) any other conditions which threatened public health, safety and welfare or the

environment have been remediated.

B. If any of the conditions of Paragraphs (1) through (3) of Subsection A of this section are not met, the department may require the owner or operator to perform additional remediation.

C. Notwithstanding the conditions in Subsection A of this section, owners and operators may continue to operate the mechanical and electrical components of the remediation system when it is effectively reducing contaminant concentrations, as determined and approved by the department.

D. Termination of remediation in accordance with this section does not relieve owners and operators of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

E. Following department approval, owners and operators shall decommission the electrical and mechanical components of the remediation system and properly abandon wells that are no longer needed for remediation or monitoring, in accordance with federal, state and local laws and regulations.

[20.5.120.2026 NMAC - N, 07/24/2018]

20.5.120.2027 NO FURTHER ACTION DETERMINATION:

A. A no further action determination is a technical determination issued by the department that documents that the owner or operator of a site has met all applicable remediation standards and that no contaminant will present a significant risk of harm to public health, safety and welfare and the environment.

B. Any owner or operator may request that the department evaluate a site for a no further action determination by submitting a written request to the department. The request shall include the following, if requested by the department:

(1) description of the site including a historical

overview and generalized description of businesses, structures, vegetation, other prominent features, and location of the site;

(2) surveyed plat of the site, site map with legal description, or both;

(3) completed current environmental conditions table listing all areas of environmental concern on the site subject to remediation; the table shall include the following information about each area of environmental concern:

(a) remedial action taken, date, regulatory agency;

(b) residual contaminants of concern;

(c) clean-up status; and

(d) clean-up standards for contaminants of concern;

(4) chronology of events for each area investigated or remediated; and

(5) other relevant documents, as requested by the department.

C. Owners and operators shall receive approval of a determination for no further action status for the release when all of the following conditions are met:

(1) groundwater and surface water contamination related to the release is less than or equal to WQCC and EIB standards, and where there had been groundwater contamination related to the release, the applicable standards have been achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise approved by the department;

(2) soil contamination is less than or equal to applicable standards; and

(3) any other conditions which did threaten public health, safety and welfare or the environment have been adequately mitigated.

D. Owners and operators shall receive approval of a request for no further action determination for the release when

subsurface water does not meet the definition of "subsurface water" in 20.6.2.7 NMAC or is unprotected pursuant to Subsection A of 20.6.2.3101 NMAC, if NAPL and contaminant saturated soil have been adequately remediated in accordance with this part and any other conditions which threatened public health, safety and welfare or the environment have been adequately mitigated.

E. Upon completion of an assessment by the department that a site qualifies for a no further action determination, the department shall issue a no further action determination letter.

F. Any of the following may result in a reversal of a no further action determination:

(1) new information becomes available or circumstances arise indicating that an unacceptable risk to public health, safety and welfare or the environment exists; or

(2) change in use or reasonable foreseeable future use of land or resources, including a change from less sensitive land use to more sensitive land use, such as from commercial or industrial to residential, and including the drilling of water supply wells in the vicinity of remaining contamination.

[20.5.120.2027 NMAC - N, 07/24/2018]

20.5.120.2028 REQUEST FOR EXTENSION OF TIME:

A. For good cause shown, the department may extend the time for complying with any deadline set forth in this part. The request for an extension of time shall specify the reason for the request, the actions taken to comply with the deadline and the period of time for which the extension is requested.

B. The department shall not grant an extension for more than 30 days at a time unless the department determines additional time is warranted. The department may place conditions on the extension.

C. Lack of diligence or failure of owners and operators to comply with this part shall be grounds

for denying a request for an extension of time.
[20.5.120.2028 NMAC - N, 07/24/2018]

**20.5.120.2029
RECORDKEEPING AND
RETENTION:**

A. Owners and operators of a hazardous waste UST system where a release has occurred shall retain records documenting compliance with all applicable requirements of 20.5.120 NMAC. If the owner and operator are separate persons, only one person is required to maintain the records required by the section, however both parties are liable in the event of non-compliance.

B. Records to be maintained shall include, but not be limited to:

- (1) 72-hour report;
- (2) 14-day report;
- (3) NAPL Assessment report;
- (4) interim removal of contaminated soil report;
- (5) minimum site assessment, preliminary investigation report;
- (6) secondary investigation report;
- (7) final remediation plan;
- (8) groundwater monitoring reports;
- (9) operation and Maintenance reports.

C. Records shall be maintained for a minimum period of 10 years following a no further action determination as set forth in 20.5.120.2027 NMAC.
[20.5.120.2029 NMAC - N, 07/24/2018]

**20.5.120.2030
REPORTING:**

A. Owners and operators shall provide to the department all reports as required in 20.5.120 NMAC in accordance with the timeline or deadlines as set forth in Subsection E of 20.5.120.2000 NMAC.

B. Owners and operators shall ensure all reports, plans and requests required in 20.5.120 NMAC contain at a minimum, in addition to the requirements set forth in 20.5.120.2002, 20.5.120.2003, 20.5.120.2005, 20.5.120.2006, 20.5.120.2009, 20.5.120.2011, 20.5.120.2012, 20.5.120.2015, 20.5.120.2019, 20.5.120.2020, 20.5.120.2023, 20.5.120.2024, 20.5.120.2029 and 20.5.120.2030 NMAC.

- (1) release name and address;
 - (2) facility identification and release identification numbers;
 - (3) workplan and deliverable identification numbers as applicable;
 - (4) owner and operator name and address, and
 - (5) date report was completed.
- [20.5.120.2030 NMAC - N, 07/24/2018]

**HISTORY OF 20.5.120 NMAC:
Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.
EIB/USTR-13, Underground Storage Tank Regulations - Part XIII - Corrective Action For Hazardous Substance UST Systems, filed 6/13/90.

History of Repealed Material:
20 NMAC 5.13, Environmental Protection, Underground Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances (filed 12/30/99), repealed 8/15/03.
20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances (filed 7/16/03), repealed 6/15/09.
20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances (filed 6/15/09), repealed 7/24/18.

Other History:
EIB/USTR-13, Underground Storage Tank Regulations - Part XIII - Corrective Action For Hazardous Substance UST Systems, (filed 6/13/90) reformatted, renumbered and replaced by 20 NMAC 5.13, Underground Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, effective 11/05/95.
20 NMAC 5.13, Underground Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, (filed 12/30/99) replaced by 20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, effective 8/15/03.
20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, (filed 7/16/03) was replaced by 20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, effective 6/15/09.
20.5.13 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, (filed 7/16/03) was reformatted, renumbered, and replaced by 20.5.120 NMAC, Petroleum Storage Tanks, Corrective Action for UST Systems Containing Other Regulated Substances, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 121 CORRECTIVE
ACTION FUND USE AND
EXPENDITURES**

**20.5.121.1 ISSUING
AGENCY:** New Mexico
Environmental Improvement Board.
[20.5.121.1 NMAC - N, 07/24/2018]

20.5.121.2 SCOPE: This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC and to the use of the corrective action fund. If the owner and the operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part; however, both parties are liable in the event of noncompliance.
[20.5.121.2 NMAC - N, 07/24/2018]

20.5.121.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Ground Water Protection Act, sections 74-6B-1 through 74-6B-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, sections 74-1-1 through 74-1-16 NMSA 1978.
[20.5.121.3 NMAC - N, 07/24/2018]

20.5.121.4 DURATION: Permanent.
[20.5.121.4 NMAC - N, 07/24/2018]

20.5.121.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.121.5 NMAC - N, 07/24/2018]

20.5.121.6 OBJECTIVE: The purposes of this part are (1) to establish priorities for the use of the corrective action fund at sites contaminated by releases of regulated substances from storage tanks and (2) to specify procedures for administering the fund in conjunction with the procedures set forth in 20.5.123 NMAC, adopted by the New Mexico environment department.
[20.5.121.6 NMAC - N, 07/24/2018]

20.5.121.7 DEFINITIONS: The definitions in 20.5.101 NMAC and the Ground Water Protection Act apply to this part. In the case of conflict, the definitions in the Ground Water Protection Act shall apply to this part.
[20.5.121.7 NMAC - N, 07/24/2018]

20.5.121.8 to 20.5.121.2099

[RESERVED]

20.5.121.2100 PERMISSIBLE FUND EXPENDITURES: The department shall make expenditures from the fund that are necessary to take emergency corrective action, to investigate releases and undertake other corrective action in accordance with the priorities established in this part, to make payments to or on behalf of owners and operators as provided in 20.5.123 NMAC, to pay for the department's reasonable costs of administering the fund, to pay for the department's costs associated with the recovery of expenditures from the fund pursuant to section 74-6B-8 NMSA 1978, including related legal costs, and to pay the state's share of federal leaking underground storage tank trust fund cleanup costs as required by the federal Resource Conservation and Recovery Act. The department shall keep records of the expenditures made from the fund and shall make those records available to the interim legislative finance committee upon request.
[20.5.121.2100 NMAC - N, 07/24/2018]

20.5.121.2101 CORRECTIVE ACTION BY OWNERS AND OPERATORS: Owners and operators shall take corrective action in accordance with 20.5.118 NMAC and 20.5.119 or 20.5.120 NMAC, and the department shall make payments to or on behalf of owners and operators in accordance with section 74-6B-13 NMSA 1978 and the provisions of 20.5.123 NMAC. The department shall designate a site where the owner or operator takes corrective action and applies to the fund for payment of corrective action costs as a responsible party-lead site.
[20.5.121.2101 NMAC - N, 07/24/2018]

20.5.121.2102 CORRECTIVE ACTION BY THE DEPARTMENT - INFORMATION REQUIRED:

A. When the department determines that the owners and operators are unknown, unable or unwilling to take corrective

action as described in 20.5.121.2101 NMAC, or when the department determines that a single entity is necessary to lead the corrective action, the department may designate the site as a state-lead site and take corrective action using the fund.

B. To make a determination that the owner and operator are unknown, the department shall, as appropriate:

(1) investigate site specifics;

(2) ascertain the current status and past history of the tanks at the site and determine the compliance status of the tanks; and

(3) review and document search results of all additional reasonably available records.

C. To make a determination that the owner and operator are unable to take corrective action, the department shall, as appropriate:

(1) investigate site specifics;

(2) ascertain the current status and past history of the tanks at the site and determine the compliance status of the tanks;

(3) request and review the owner's and operator's documentation of mental or physical inability, including but not limited to physician statements and court orders;

(4) request and review the owner's and operator's financial records for the past two years, including but not limited to federal tax returns, and evaluate the owner's and operator's ability to pay, based on anticipated costs of remediation; and

(5) review and document search results of all additional reasonably available records.

D. To make a determination that the owner and operator are unwilling to take corrective action, the department shall, as appropriate:

(1) investigate site specifics;

(2) ascertain the liable owner and operator and

identify any other owner and operator that may be liable;

(3) review and document search results of all additional reasonably available records; and

(4) send a notice of violation, return receipt requested, to the appropriate owner and operator.

E. To make a determination that a single entity is necessary to lead the corrective action, or in the case of danger to human health and the environment, the department shall, as appropriate:

(1) investigate site specifics;

(2) ascertain the current status and past history of the tanks at the site and determine the compliance status of the tanks; and

(3) review and document search results of all additional reasonably available records.

[20.5.121.2102 NMAC - N, 07/24/2018]

20.5.121.2103 CORRECTIVE ACTION BY THE DEPARTMENT - OWNER AND OPERATOR NOTIFICATION:

A. Upon a determination that a site be designated a state-lead site, the department shall send a notice to the owner and operator, if known, with the division director's signature notifying the owner and operator that the site is being designated a state-lead site and that the department may initiate an action for recovery of its costs of corrective action from the owner and operator pursuant to Subsection C of this section.

B. When the department takes corrective action at sites as described in 20.5.121.2102 NMAC, it shall do so in accordance with the provisions of 20.5.121.2104 NMAC.

C. The department may recover the costs of corrective action taken under 20.5.121.2102 NMAC from the owner or operator, unless the owner or operator demonstrates compliance as required

by section 74-6B-8 NMSA 1978 and the provisions of 20.5.123 NMAC.

D. Owners and operators at sites where the department has taken corrective action under this section shall assume responsibility for and control of the corrective action when required or permitted by the department. Any request by the owner and operator to change the designation of a site from a state-lead site to a responsible party-lead site shall be in writing, shall state the reasons why corrective action by the department is no longer necessary, and shall include appropriate documentation to support the request. The department may request additional documentation from the owner and operator, shall respond to the request in writing and shall state the reasons for its decision.

[20.5.121.2103 NMAC - N, 07/24/2018]

20.5.121.2104 SITE PRIORITIZATION:

A. The department shall assign a rank to all sites contaminated by releases from storage tanks using the leaking storage tank (LST) ranking system, as defined in 20.5.101.7 NMAC, and shall classify sites as being first, second or third priority sites. A site's priority shall be based on a minimum site assessment, as defined in 20.5.101.7 NMAC, or other available information that documents an effect or potential effect of the release on public health, safety and welfare or the environment. The department may re-rank and reclassify as warranted, based on facts affecting public health, safety and welfare and the environment.

(1) A first priority site is a site where the release of a regulated substance from a storage tank system has created an actual or imminent hazard to public health, safety and welfare or the environment such that the following corrective action is required:

(a) water supply protection or replacement pursuant to Subsection C or D of 20.5.119.1902 and 20.5.120.2002 NMAC;

(b) mitigation of toxic or explosive or potentially toxic or explosive vapors pursuant to Subsection F of 20.5.119.1902 and 20.5.120.2002 NMAC; or

(c) other corrective action as required to protect public health, safety and welfare or the environment from hazards caused by the release pursuant to Subsection G of 20.5.119.1902 and 20.5.120.2002 NMAC.

(2) A second priority site is a site where the release of a regulated substance from a storage tank system has created a source of environmental contamination such that the following corrective action is required:

(a) containment and removal of non-aqueous phase liquid pursuant to 20.5.119.1905 and 20.5.120.2005 NMAC; or

(b) treatment of contaminant saturated soils pursuant to 20.5.119.1906 and 20.5.120.2006 NMAC.

(3) A third priority site is a site which is not first or second priority, containing contaminants that were released from the storage tank system and where corrective action is required by 20.5.119 or 20.5.120 NMAC.

B. When the department approves corrective action other than minimum site assessments, it shall approve corrective action at sites in order of rank and shall approve priority one sites first, priority two sites after priority one sites, and priority three sites after priority one and priority two sites, except that the department may approve emergency corrective action at any time.

[20.5.121.2104 NMAC - N, 07/24/2018]

20.5.121.2105 ORDER OF PAYMENTS IN CASE OF INSUFFICIENT FUNDS:

A. If, after the department has determined that the owner or operator is in substantial

compliance, the department determines that the fund budget or the fund balance is insufficient to cover the amount requested for payment, the department shall promptly notify the owner or operator. Payment for eligible costs shall occur when sufficient amounts are available in the fund budget or the fund, subject to the provisions of this section.

B. If the fund budget or the fund balance is insufficient to pay all applications for payment under 20.5.123.2318 NMAC but the fund remains an approved financial responsibility mechanism under 20.5.117.1711 NMAC, the department shall pay applications for payment for approved corrective action in order of priority as established in accordance with this part from the funds available, so long as funds are available.

C. Applications for sites of equal score based on the priorities established in this part shall be paid in order of date of receipt of complete applications for payment. For applications for sites of equal score with the same date of receipt, the earliest date on which a corrective action was taken as evidenced by the date of the earliest invoice included in the application shall determine the order of payment.

D. When the fund budget or the fund balance is insufficient to pay all applications for payment under 20.5.123.2318 NMAC and the fund is no longer an approved financial responsibility mechanism, the department shall make payments according to priority rank as established in this part and in the following percentages, so long as funds are available:

(1) one hundred percent of all reasonable and necessary eligible costs incurred to complete a minimum site assessment in excess of the deductible;

(2) one hundred percent of all reasonable and necessary eligible costs incurred to conduct a secondary investigation in accordance with 20.5.119.1910 or 20.5.120.2010 NMAC;

(3) in the

case of reasonable and necessary costs incurred to complete corrective action other than the minimum site assessment and secondary investigation, according to the following formulae:

(a) for owners or operators of two or fewer facilities used for retail gasoline sales and whose facilities have less than 40,000 gallons combined total of product dispensed monthly, averaged over the last two years of operation: first priority LST ranked sites: one hundred percent; second priority LST ranked sites: ninety-five percent; third priority LST ranked sites: ninety percent; or

(b) for sites owned or operated by other owners or operators: one hundred percent for first priority LST ranked sites. The percentage of payment for second and third priority LST ranked sites shall be based on the ending quarterly unobligated balance of the fund proportional to the amount of each application for payment received in that quarter for these sites. The quarters end on June 30, September 30, December 31 and March 31.

The percentage of payment equals the unobligated fund balance on the last day of the quarter divided by the dollar amount of reasonable and necessary eligible costs of applications for payment received in the quarter, not to exceed one hundred percent. For purposes of this subparagraph, "unobligated balance" or "unobligated fund balance" means corrective action fund equity less all known or anticipated liabilities against the fund; and

(4) payment for remaining eligible costs shall be made pursuant to Subsection E of this section.

E. When the fund is reestablished as an approved financial responsibility mechanism, payment shall be made for the balance of the eligible costs previously submitted but not paid under provisions of this section. These payments shall be made in the order in which sites were ranked by the department, in accordance with this part, as funds

become available.

F. The department's determinations under this section concerning the availability of funds shall be final and not subject to appeal.

[20.5.121.2105 NMAC - N, 07/24/2018]

20.5.121.2106 RESERVED MONEY:

A. The department shall establish a reserve of one-million dollars (\$1,000,000) in the fund for the costs of taking emergency corrective action. The department may make expenditures from this reserve during the fiscal year and replenish the reserve at the beginning of the next fiscal year.

B. Money that is reserved pursuant to Subsection A of this section may be expended by the department only for corrective action necessary when an emergency threat to public health, safety and welfare or the environment is determined by the department to exist.

[20.5.121.2106 NMAC - N, 07/24/2018]

HISTORY OF 20.5.121 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives: EIB/USTR-15, Underground Storage Tank Regulations - Part XV - Ground Water Protection Act Regulations, filed 6/18/91.

History of Repealed Material:

20 NMAC 5.15 Underground Storage Tanks, Corrective Action Fund Allocation for State-Lead Sites (filed 10/6/95), repealed 2/2/00.

20 NMAC 5.15, Underground Storage Tanks, Corrective Action Fund Use and Expenditures (filed 12/30/99), repealed 8/15/03.

20.5.15 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures (filed 7/16/03), repealed 6/15/09.

20.5.15 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures (filed 6/15/09),

repealed 7/24/18.

Other History:

EIB/USTR-15, Underground Storage Tank Regulations - Part XV - Ground Water Protection Act Regulations (filed 6/18/91), renumbered, reformatted and replaced by 20 NMAC 5.15, effective 11/5/95. 20 NMAC 5.15, Underground Storage Tanks, Corrective Action Fund Use and Expenditures (filed 10/6/95), was replaced by 20 NMAC 5.15, Underground Storage Tanks, Corrective Action Fund Use and Expenditures, effective 2/2/00. 20 NMAC 5.15, Underground Storage Tanks, Corrective Action Fund Use and Expenditures (filed 12/30/99), renumbered, reformatted and replaced by 20.5.15, NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures, effective 8/15/03. 20.5.15 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures (filed 7/16/03), was replaced by 20.5.15 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures, effective 6/15/09. 20.5.15 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures (filed 6/15/09), was replaced by 20.5.121 NMAC, Petroleum Storage Tanks, Corrective Action Fund Use and Expenditures, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 122 QUALIFICATION
OF PERSONS PERFORMING
CORRECTIVE ACTION**

20.5.122.1 ISSUING AGENCY: New Mexico Environmental Improvement Board. [20.5.122.1 NMAC - N, 07/24/2018]

20.5.122.2 SCOPE: This part applies to all persons performing corrective action on behalf of storage tank owners, operators or the state under 20.5 NMAC. [20.5.122.2 NMAC - N, 07/24/2018]

20.5.122.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978. [20.5.122.3 NMAC - N, 07/24/2018]

20.5.122.4 DURATION: Permanent. [20.5.122.4 NMAC - N, 07/24/2018]

20.5.122.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section. [20.5.122.5 NMAC - N, 07/24/2018]

20.5.122.6 OBJECTIVE: The objective of this part is to establish rules for the qualification of firms for and disqualification of firms from conducting corrective action on sites where releases from storage tanks have caused contamination. [20.5.122.6 NMAC - N, 07/24/2018]

20.5.122.7 DEFINITIONS:
A. The definitions in 20.5.101 NMAC and the Ground Water Protection Act apply to this part. In the case of conflict, the definitions in the Ground Water Protection Act control.

B. For purposes of this part, the term “firm” shall be synonymous with the term “person,” as defined in 20.5.101 NMAC.

C. For purposes of this part, the term “proposal” means an offer to complete work submitted in response to given specifications issued for a responsible party-lead site or for a state-lead site. [20.5.122.7 NMAC - N, 07/24/2018]

20.5.122.8 to 20.5.122.2199 [RESERVED]

20.5.122.2200 PAYMENTS: Payments from the corrective action fund may be made only for corrective action conducted by firms qualified by the department to perform such work pursuant to this part. [20.5.122.2200 NMAC - N, 07/24/2018]

20.5.122.2201 QUALIFICATION OF FIRMS:

A. Except as provided in Subsections C and D of this section, firms shall be evaluated for qualification by the department to conduct corrective action for each workplan submitted. Except as provided in Subsection B of this section, firms shall be qualified upon approval of the following:

(1) the subject workplan;

(2) a current statement of qualifications of the firm’s authorized representative, the individual with direct, responsible, supervisory control of the approved workplan unless previously submitted under the current active phase of corrective action; and

(3) if the involvement of a professional engineer is required for the work to be undertaken under the workplan, a current statement of qualifications of the professional engineer that complies with 20.5.122.2203 NMAC.

B. In addition to the requirements of Subsection A of this section, if the department reasonably believes that a firm already qualified to perform corrective action under an approved workplan is not timely paying its subcontractors, suppliers, laboratories, and other entities included in any invoice connected with an approved workplan, the firm shall not be qualified unless it provides proof to satisfy the department that within the preceding two years it has paid those entities according to the firm’s contractual agreements.

C. When initial response or initial abatement is

required at a site, firms may be qualified prior to commencement of work by submitting for verbal approval a statement of qualifications for the authorized representative and, if a professional engineer is required by 20.5.119 NMAC or 20.5.120 NMAC, for the professional engineer. Written statements of qualifications shall be submitted to the department with the report on initial abatement required by Subsection B of 20.5.119.1903 or 20.5.120.2002 NMAC.

D. When remediation is required at a site, selection of a remediation proposal in accordance with the competitive selection process described in 20.5.123.2306 NMAC and 20.5.123.2308 NMAC qualifies the successful firm to conduct corrective action within the scope of work defined by the proposal, except as provided in 20.5.122.2204 NMAC. A firm may be tentatively qualified prior to submitting a proposal under 20.5.123.2306 NMAC or 20.5.123.2308 NMAC by submitting for verbal approval a statement of qualifications for the authorized representative and, if a professional engineer is required by 20.5.119 NMAC or 20.5.120 NMAC, for the professional engineer.

E. Statements of qualifications shall include:

- (1) the authorized representative's name and status as sole proprietor, officer, partner, employee or subcontractor of the firm;
- (2) education relevant to the nature of the work to be performed;
- (3) experience relevant to the nature of the work to be performed; and
- (4) licenses and certifications required for the work to be performed.

F. While the required education and experience for the authorized representative may vary with the work to be performed, the following shall be considered minimums: a baccalaureate degree in science or engineering and at least two years of applicable experience

in the investigation and remediation of unsaturated and saturated zone contamination, or five years supervised experience in investigation or remediation of unsaturated and saturated zone contamination.

G. Firms performing corrective action must maintain their qualification at all stages of work in order for the costs of that work to be eligible for payment.

H. This part is in addition to and not in lieu of any other licensing and registration requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

I. This part does not relieve contractors or owners or operators of their obligations and liabilities under applicable local, state, and federal laws and regulations. [20.5.122.2201 NMAC - N, 07/24/2018]

**20.5.122.2202
DISQUALIFICATION OF FIRMS:**

A. The department may disqualify a qualified firm if the department determines that the firm has:

- (1) knowingly misrepresented a material fact in its request to become qualified or in any subsequent report or communication with the department;
- (2) failed to comply with any of the requirements of 20.5.119 NMAC, 20.5.120 NMAC, 20.5.122 NMAC or 20.5.123 NMAC;
- (3) failed to complete to the department's satisfaction the work described in one or more approved workplans; or
- (4) when required to do so by 20.5.122.2201 NMAC, failed to prove to the department's satisfaction that it has timely paid its subcontractors, suppliers, laboratories and other entities.

B. A firm that has been disqualified under this section may become eligible to perform corrective action upon satisfactory proof that the firm has remedied, to the department's satisfaction, the problem that led to disqualification. For purposes

of Paragraph (4) of Subsection A of this section, a firm that has timely paid its subcontractors, suppliers, laboratories and other entities for at least six months, and which meets all applicable requirements of 20.5.122.2201 NMAC, shall become eligible to perform corrective action. [20.5.122.2202 NMAC - N, 07/24/2018]

20.5.122.2203 REQUIREMENTS FOR PROFESSIONAL ENGINEERS:

If the involvement of a professional engineer is required for the corrective action being conducted, the firm's qualification requirements shall include licensure by the New Mexico state board of licensure for professional engineers and surveyors in the discipline of engineering appropriate to the corrective action. This requirement may be met by demonstrating that the firm has on staff or available by contract a professional engineer licensed in the appropriate discipline. [20.5.122.2203 NMAC - N, 07/24/2018]

20.5.122.2204 ADVERSE DETERMINATIONS ON REQUESTS TO QUALIFY FIRMS:

A. In reviewing a firm's qualifications to perform corrective action, the department shall consider the nature of the work to be performed under the submitted workplan. Except as provided in Subsections B and C of this section, the department's determination on a request to qualify a firm for a workplan involving remediation shall be consistent with the department's selection of the firm's proposal for remediation under 20.5.123 NMAC, if applicable.

B. Failure of a qualified firm to complete work described in one or more approved workplans to the satisfaction of the department may be taken into consideration when the firm's qualifications are reviewed by the department for purposes of future workplans.

C. The failure of

a qualified firm to complete work described in an approved workplan to the satisfaction of the department may result in a determination by the department that further work by the firm is not eligible for payment or that a new remediation proposal or workplan, or both, is required.

D. Nothing in this part is intended to affect the rights or obligations of the department or its contractors in any suspension or debarment proceedings undertaken by the department under the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978. Suspension or debarment under the Procurement Code will be considered, however, in the department's determination on a firm's qualifications under this part. [20.5.122.2204 NMAC - N, 07/24/2018]

20.5.122.2205 APPEALING ADVERSE DETERMINATIONS:

A firm that has been denied qualification or that has been disqualified under this part may obtain review of the decision by using the procedures set forth in 20.5.125 NMAC.

[20.5.122.2205 NMAC - N, 07/24/2018]

HISTORY OF 20.5.122 NMAC:

Pre-NMAC History: None.

History of Repealed Material:

20 NMAC 5.16, Underground Storage Tanks, Certification of Contractors (filed 2/27/97), repealed 2/2/00.

20 NMAC 5.16, Underground Storage Tanks, Qualification of Contractors (filed 12/30/99), repealed 8/15/03.

20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action (filed 7/16/03), repealed 6/15/09.

20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action (filed 6/15/09), repealed 7/24/18.

Other History:

20 NMAC 5.16, Underground Storage Tanks, Certification of Contractors, (filed 10/06/95) replaced by 20 NMAC 5.16, Underground Storage

Tanks, Certification of Contractors, effective 4/1/97.

20 NMAC 5.16, Underground Storage

Tanks, Certification of Contractors, (filed 02/27/97) replaced by 20

NMAC 5.16, Underground Storage

Tanks, Qualification of Contractors, effective 2/2/00.

20 NMAC 5.16, Underground Storage

Tanks, Qualification of Contractors, (filed 12/30/99) replaced by 20.5.16

NMAC, Petroleum Storage Tanks,

Qualification of Persons Performing Corrective Action, effective 8/15/03.

20.5.16 NMAC, Petroleum Storage

Tanks, Qualification of Persons

Performing Corrective Action

(filed 7/16/03) replaced by 20.5.16

NMAC, Petroleum Storage Tanks,

Qualification of Persons Performing

Corrective Action, effective 6/15/09.

20.5.16 NMAC, Petroleum Storage

Tanks, Qualification of Persons

Performing Corrective Action

(filed 6/15/09) was renumbered,

reformatted, and replaced by 20.5.122

NMAC, Petroleum Storage Tanks,

Qualification of Persons Performing

Corrective Action, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

TITLE 20

**ENVIRONMENTAL
PROTECTION**

**CHAPTER 5 PETROLEUM
STORAGE TANKS**

**PART 124 LENDER
LIABILITY**

20.5.124.1 ISSUING

AGENCY: New Mexico Environmental Improvement Board. [20.5.124.1 NMAC - N, 07/24/2018]

20.5.124.2 SCOPE:

This part applies to all storage tank systems in this state except as provided in Subsections B and D of 20.5.101.2 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners

and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC.

[20.5.124.2 NMAC - N, 07/24/2018]

20.5.124.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-1-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-15 NMSA 1978.

[20.5.124.3 NMAC - N, 07/24/2018]

20.5.124.4 DURATION:

Permanent.

[20.5.124.1 NMAC - N, 07/24/2018]

20.5.124.5 EFFECTIVE

DATE: July 24, 2018, unless later date is indicated in the bracketed note at the end of a section.

[20.5.124.1 NMAC - N, 07/24/2018]

20.5.124.6 OBJECTIVE:

This part is adopted to limit the regulatory obligations of lending institutions and other persons who hold a security interest in a storage tank system, or in real estate containing a storage tank, or that acquire a title or deed to a storage tank or a facility or property on which a storage tank is located.

[20.5.124.1 NMAC - N, 07/24/2018]

20.5.124.7 DEFINITIONS:

The definitions in 20.5.101 NMAC apply to this part. In addition, when used in this part, the following terms shall have the meanings given below:

A. "Storage tank technical standards," as used in this part, refers to the requirements of 20.5.102, 20.5.104, 20.5.106 through 20.5.111 NMAC, 20.5.114 and 20.5.115 NMAC, and 20.5.118.1800 NMAC through Subsection A of 20.5.118.1801 NMAC.

B. Petroleum production, refining, and marketing.

(1) "Petroleum production" means the production of crude oil or other forms of petroleum

(as defined in 20.5.101.7 NMAC) as well as the production of petroleum products from purchased materials.

(2) "Petroleum refining" means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) "Petroleum marketing" means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

C. "Indicia of ownership" means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

D. A "holder" is a person who maintains indicia of ownership primarily to protect a security interest in a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or

other person who acts on behalf or for the benefit of a holder.

E. A "borrower," "debtor," or "obligor" is a person whose petroleum storage tank or storage tank system or facility or property on which the petroleum storage tank or storage tank system is located is encumbered by a security interest. These terms may be used interchangeably.

F. "Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) "Security interest" means an interest in a petroleum storage tank or storage tank system or in the facility or property on which a petroleum storage tank or storage tank system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in a storage tank or storage tank system or in the facility or property on which the storage tank or storage tank system is located, for the purpose of securing a loan or other obligation.

(2) "Primarily to protect a security interest," as used in this part, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

G. "Operation" means, for purposes of this part, the use,

storage, filling, or dispensing of petroleum contained in a storage tank or storage tank system.

H. "Participating in the management of a storage tank or storage tank system" means that the holder is engaging in decision-making control of, or activities related to, operation of the storage tank or storage tank system, as defined herein. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control storage tank or storage tank system operations.

I. "Foreclosure" means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the storage tank, storage tank system, storage tank facility, and property on which the storage tank or storage tank system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the storage tank, storage tank system, storage tank facility, and property on which the storage tank or storage tank system is located.

J. "Loan work out" means those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

K. "Written, bona fide, firm offer" means a legally

enforceable, commercially reasonable, cash offer solely for the foreclosed storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. [20.5.124.7 NMAC - N, 07/24/2018]

20.5.124.8 to 20.5.124.2399 [RESERVED]

20.5.124.2400 ACTIONS THAT ARE PARTICIPATION IN MANAGEMENT:

A. Participation in the management of a storage tank or storage tank system means, for purposes of this part, actual participation by the holder in the management or control of decision-making related to the operation of a storage tank or storage tank system. A holder is participating in the management of the storage tank or storage tank system only if the holder either:

(1) Exercises decision-making control over the operational (as opposed to financial or administrative) aspects of the storage tank or storage tank system, such that the holder has undertaken responsibility for all or substantially all of the management of the storage tank or storage tank system; or

(2) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision-making of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

B. Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in a storage tank or storage tank system, and include functions such as that of a facility or plant manager, operations manager,

chief operating officer, or chief executive officer.

C. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions.

D. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in 20.5 NMAC.

[20.5.124.2400 NMAC - N, 07/24/2018]

20.5.124.2401 ACTIONS THAT ARE NOT PARTICIPATION IN MANAGEMENT PRE-FORECLOSURE:

A. Actions at the inception of the loan or other transaction.

(1) No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subpart.

(2) A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the storage tank or storage tank system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the storage tank or storage tank system or facility or property on which the storage tank or storage tank

system is located.

B. Loan policing and work out.

(1) Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this part.

(2) The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower.

(3) Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(4) Policing activities.

(a) Policing the security interest or loan. A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the storage tank or storage tank system as provided in Subsection A of this section. Such policing actions include, but are not limited to, the following activities:

(i) requiring the borrower to clean up contamination from the storage tank or storage tank system during the term of the security interest;

(ii) requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest;

(iii) securing or exercising authority to monitor or inspect the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located (including on-site inspections) in which indicia of ownership are

maintained, or the borrower's business or financial condition during the term of the security interest; or

(iv) taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(b)

Environmental policing activities. Policing activities also include undertaking by the holder of storage tank environmental compliance actions and voluntary environmental actions taken in compliance with 20.5 NMAC, provided that the holder does not otherwise participate in the management or daily operation of the storage tank or storage tank system as provided in Subsection A of this section, 20.5.124.2404 and 20.5.124.2405 NMAC. A holder who undertakes these actions shall do so in compliance with the applicable requirements in 20.5 NMAC. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the storage tank or storage tank system. Such allowable actions include, but are not limited to:

(i)

release detection and release reporting;

(ii)

release response and corrective action;

(iii)

temporary or permanent closure of a storage tank or storage tank system;

(iv)

storage tank upgrading or replacement; and

(v)

maintenance of corrosion protection.

(5) Loan work

out. A holder who engages in loan work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the storage tank

or storage tank system as provided in Subsection A of this section. [20.5.124.2401 NMAC - N, 07/24/2018]

20.5.124.2402 FORECLOSURE ON A STORAGE TANK OR STORAGE TANK SYSTEM OR FACILITY OR PROPERTY ON WHICH A STORAGE TANK OR STORAGE TANK SYSTEM IS LOCATED, AND PARTICIPATION IN MANAGEMENT ACTIVITIES POST-FORECLOSURE:

A. Foreclosure.

(1) Indicia

of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in 20.5.124.7 NMAC) prior to or after foreclosure.

(2) For

purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner a storage tank or storage tank system or facility or property on which the

storage or storage tank system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, or may employ the means specified in Subsection B of this section.

(3) A holder

that outbids, rejects, or fails to act upon a written bona fide, firm offer of fair consideration for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, as provided in Subsection B of this section, is not considered to hold indicia of ownership primarily to protect a security interest.

B. Holding foreclosed property for disposition and liquidation.

(1) A

holder may conduct the following activities without voiding the security interest exemption, subject to the requirements of this part:

(a)

A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located.

(b)

A holder may arrange for an existing or new operator to continue or initiate operation of the storage tank or storage tank system.

(2) A holder

establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the

storage tank or storage tank system or the facility or property on which the storage tank or storage tank system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located.

(a)

For purposes of this provision, the 12-month period begins to run from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located.

(b)

If the holder fails to act diligently to acquire marketable title or deed or to gain access to the storage tank or storage tank system, the 12-month period begins to run from the date on which the holder first acquires either title to or possession of the secured storage tank or storage tank system, or facility or property on which the storage tank or storage tank system is located.

(3)

A holder that outbids, rejects, or fails to act upon an offer of fair consideration

for the storage tank or storage tank system or the facility or property on which the storage tank or storage tank system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(a)

Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, is the value of the security interest as defined in this section.

(i)

The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure).

(ii)

The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of a storage tank or storage tank system

or facility or property on which the storage tank or storage tank system is located, or other disposition.

(iii)

The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located), and corrective action costs incurred under 20.5.118, 20.5.119, or 20.5.120 NMAC or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure.

(iv)

In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this paragraph.

(b)

Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt, a written, bona fide, firm offer of fair consideration for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located received at any time after six months following foreclosure, as defined in 20.5.124.7 NMAC.

(i)

For purposes of this provision, the six-month period begins to run from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the storage tank, storage tank system,

storage tank facility and property on which the storage tank or storage tank system is located, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the storage tank or storage tank system, storage tank facility and property on which the storage tank or storage tank system is located.

(ii)

If the holder fails to act diligently to acquire marketable title or deed or to gain access to the storage tank or storage tank system, the six-month period begins to run from the date on which the holder first acquires either title to or possession of the secured storage tank or storage tank system, or facility or property on which the storage tank or storage tank system is located.

C. Actions that are not participation in management post-foreclosure.

(1) A holder is not considered to be participating in the management of a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located when undertaking actions under 20.5 NMAC, provided that the holder does not otherwise participate in the management or daily operation of the storage tank or storage tank system as provided in Subsection A of this section and in 20.5.124.2400 NMAC. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of a storage tank system, storage tank upgrading or replacement, and maintenance of corrosion protection.

(2) A holder who undertakes these actions shall do so in compliance with the applicable requirements in 20.5 NMAC.

(3) A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the storage tank or storage tank system.

[20.5.124.2402 NMAC - N, 07/24/2018]

20.5.124.2403 OWNERSHIP OF A STORAGE TANK OR STORAGE TANK SYSTEM OR FACILITY OR PROPERTY ON WHICH A STORAGE TANK OR STORAGE TANK SYSTEM IS LOCATED:

A holder is not an “owner” of a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located for purposes of compliance with the storage tank technical standards as defined in 20.5.124.7 NMAC; the corrective action requirements under 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC; and the financial responsibility requirements under 20.5.117 NMAC, provided the person:

A. does not participate in the management of the storage tank or storage tank system as defined in 20.5.124.2400 NMAC, 20.5.124.2401 NMAC, and 20.5.124.2402 NMAC; and

B. does not engage in petroleum production, refining, and marketing, as defined in 20.5.124.7 NMAC.

[20.5.124.2403 NMAC - N, 07/24/2018]

20.5.124.2404 OPERATING A STORAGE TANK OR STORAGE TANK SYSTEM PRIOR TO FORECLOSURE:

A holder, prior to foreclosure, as defined in 20.5.124.7 NMAC, is not an “operator” of a petroleum storage tank or storage tank system for purposes of compliance with the storage tank technical standards as defined in 20.5.124.7 NMAC; the corrective action requirements under 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC; and the financial responsibility requirements under 20.5.117 NMAC, provided that the holder is not in control of or does not have responsibility for the daily operation of the storage tank or storage tank system.

[20.5.124.2404 NMAC - N, 07/24/2018]

20.5.124.2405 OPERATING A STORAGE TANK OR STORAGE TANK SYSTEM AFTER FORECLOSURE:

The following provisions apply to a holder who, through foreclosure, as defined in 20.5.124.7 NMAC, acquires a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located.

A. A holder is not an “operator” of a petroleum storage tank or storage tank system for purposes of compliance with 20.5 NMAC if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the storage tank or storage tank system, and who can be held responsible for compliance with applicable requirements of 20.5 NMAC.

B. If another operator does not exist, as provided for under Subsection A of this section, a holder is not an “operator” of the storage tank or storage tank system, for purposes of compliance with the storage tank technical standards as defined in 20.5.124.7 NMAC; the corrective action requirements under 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC; and the storage tank financial responsibility requirements under 20.5.117 NMAC, provided that the holder:

(1) empties all of its known storage tanks and storage tank systems within 60-calendar days after foreclosure or another reasonable time period specified by the department, so that, in the case of both USTs and ASTs, no more than two and one-half centimeters (one inch) of residue, or three-tenths percent by weight of the total capacity of the storage tank system, remains in the system; leaves vent lines open and functioning; caps and secures all other lines, pumps, manways, and ancillary equipment; and, for ASTs, disconnects and caps all associated piping from the AST; and

(2) empties those storage tanks and storage tank systems that are discovered after foreclosure within 60-calendar

days after discovery or another reasonable time period specified by the department, so that, in the case of both ASTs and USTs, no more than two and one-half centimeters (one inch) of residue, or three-tenths percent by weight of the total capacity of the storage tank system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and, for ASTs, disconnects and caps all associated piping from the AST.

C. For purposes of this subsection, the 12-month period begins to run from the date on which the storage tank system is emptied and secured under Subsection B of this section. If another operator does not exist, as provided for under Subsections A and B of this section, in addition to satisfying the conditions under Subsection B of this section, the holder shall either:

(1) permanently close the storage tank or storage tank system in accordance with 20.5.115 NMAC, except 20.5.115.1501 NMAC and Subsection B of 20.5.115.1504 NMAC; however, the holder is required to notify the department of a release or a suspected release in accordance with 20.5.118 NMAC; or

(2) temporarily close the storage tank or storage tank system in accordance with the following:

(a) continue operation and maintenance of corrosion protection in accordance with 20.5.107.705 NMAC;

(b) report suspected releases to the department in accordance with 20.5.118 NMAC; and

(c) conduct a site assessment in accordance with Subsection A of 20.5.115.1504 NMAC if the storage tank system is temporarily closed for more than 12 months and the storage tank system does not meet either the performance standards in 20.5.106 NMAC for new underground storage tank systems or, for AST systems, the upgrading requirements in 20.5.109

NMAC, except that the spill and overfill equipment requirements do not have to be met.

D. The storage tank system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located. Once a subsequent purchaser acquires marketable title to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, the purchaser shall decide whether to operate or close the storage tank or storage tank system in accordance with applicable requirements in 20.5 NMAC.

[20.5.124.2405 NMAC - N, 07/24/2018]

HISTORY OF 20.5.124 NMAC:
Pre-NMAC History: None

History of Repealed Material: 20 NMAC 5.11, Underground Storage Tanks, Lender Liability (filed 2/27/97), repealed 8/15/03. 20.5.11 NMAC, Underground Storage Tanks, Lender Liability (filed 8/15/03), repealed 7/24/18.

Other History:
20 NMAC 5.11, Underground Storage Tanks, Lender Liability, filed 6/6/96 was replaced by 20 NMAC 5.8, Underground Storage Tanks, Lender Liability, effective 4/1/97; 20 NMAC 5.11, Underground Storage Tanks, Lender Liability, filed 2/27/97, was renumbered, reformatted and replaced by 20.5.11 NMAC, Petroleum Storage Tanks, Lender Liability, effective 8/15/03. 20.5.11 NMAC, Underground Storage Tanks, Lender Liability, filed 8/15/03, was renumbered, reformatted and replaced by 20.5.124 NMAC, Petroleum Storage Tanks, Lender Liability, effective 7/24/18.

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**TITLE 20
ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 125
ADMINISTRATIVE REVIEW**

20.5.125.1 ISSUING

AGENCY: New Mexico
Environmental Improvement Board.
[20.5.125.1 NMAC - N, 07/24/2018]

20.5.125.2 SCOPE: This part applies to aggrieved parties as defined in this part.
[20.5.125.2 NMAC - N, 07/24/2018]

20.5.125.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.
[20.5.125.3 NMAC - N, 07/24/2018]

20.5.125.4 DURATION:

Permanent.
[20.5.125.4 NMAC - N, 07/24/2018]

20.5.125.5 EFFECTIVE

DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.125.5 NMAC - N, 07/24/2018]

20.5.125.6 OBJECTIVE:

The purpose of this part is to provide aggrieved parties a means of seeking expedited review or reconsideration of decisions made by the department under 20.5 NMAC in regulating storage tank systems in order to protect the public health, safety and welfare and the environment of the state.
[20.5.125.6 NMAC - N, 07/24/2018]

20.5.125.7 DEFINITIONS:

- A.** The definitions in 20.5.101 NMAC apply to this part.
- B.** As used in this part, the term “aggrieved party” means:
- (1) an owner, operator, person designated as a representative under 20.5.123.2311 NMAC or product deliverer aggrieved by a decision by the department pursuant to 20.5 NMAC;
- (2) a contractor aggrieved by a decision by the department under 20.5.123 NMAC;
- (3) a person that has been denied designation as a representative under 20.5.123.2311 NMAC; or
- (4) a person that has been denied qualification or disqualified under 20.5.122 NMAC. [20.5.125.7 NMAC - N, 07/24/2018]

20.5.125.8 - 20.5.125.2499 [RESERVED]**20.5.125.2500 INITIATION OF ADMINISTRATIVE REVIEW:**

- A.** Except for appeals as provided for in 20.5.123 NMAC for compliance determinations, any aggrieved party may obtain review of the decision by either:
- (1) submitting to the department a written request for informal review pursuant to 20.5.125.2501 NMAC; or
- (2) submitting to the secretary or the secretary’s designee a written request for review on written submittals pursuant to 20.5.125.2502 NMAC.
- B.** Any request for administrative review initiated pursuant to Subsection A of this section must be postmarked within 15 days of the date of the decision.
- C.** An aggrieved party may request review on written submittals under 20.5.125.2502 NMAC without first requesting informal review under 20.5.125.2501 NMAC. If, however, an aggrieved party first requests informal review under 20.5.125.2501 NMAC, the aggrieved party thereafter may request review on written submittals

under 20.5.125.2502 NMAC of the determination made by the department pursuant to Subsection D of 20.5.125.2501 NMAC, provided that the request for review on written submittals under 20.5.125.2502 NMAC is postmarked within 15 days of the date of the determination made by the department pursuant to Subsection D of 20.5.125.2501 NMAC.

D. Review under this part does not stay the decision being reviewed, unless otherwise ordered by the secretary or secretary’s designee, nor does it apply to or affect the secretary’s authority to issue compliance orders or otherwise seek enforcement of these regulations, 20.5 NMAC, under the provisions of the Hazardous Waste Act or the Ground Water Protection Act. [20.5.125.2500 NMAC - N, 07/24/2018]

20.5.125.2501 INFORMAL REVIEW:

- A.** A request for informal review by an aggrieved party shall be in writing and shall specify the grounds upon which the aggrieved party objects to the decision. Every request for informal review shall be submitted to the department by the deadline set out in Subsection B of 20.5.125.2500 NMAC.
- B.** The department shall afford prompt opportunity for an informal conference at which the aggrieved party may present the aggrieved party’s views on the issues raised in the request for review and offer any supporting documentation or testimony. The department shall notify the aggrieved party of the time, date and place of the informal conference.
- C.** If the decision to be reviewed was based on an inspection or field test performed or witnessed by an employee of the department, the member of department staff conducting the review must be someone other than the employee who conducted or witnessed the inspection or test.
- D.** After considering all written and oral views presented,

the department shall affirm, modify or reverse the original decision and shall furnish the aggrieved party with a written notification of its determination. [20.5.125.2501 NMAC - N, 07/24/2018]

20.5.125.2502 REVIEW BY THE SECRETARY OR THE SECRETARY’S DESIGNEE ON WRITTEN SUBMITTALS:

- A.** Every request for review by the secretary or the secretary’s designee on written submittals shall be in writing and shall specify the grounds upon which the aggrieved party objects to the decision. The request shall be accompanied by any and all written materials and argument which the aggrieved party wishes the secretary or the secretary’s designee to consider upon review. The request and all written materials and argument shall be submitted to the secretary or the secretary’s designee by the deadline set out in Subsections B and C of 20.5.125.2500 NMAC.
- B.** Within 15 days after the filing of the aggrieved party’s request for review and submittal of all the aggrieved party’s supporting material, department staff shall provide to the secretary or the secretary’s designee any and all written materials and argument in support of the position of department staff on the issues raised by the aggrieved party.
- C.** For good cause shown, the secretary or the secretary’s designee may permit either party (that is, either department staff or the aggrieved party) additional time in which to submit the supporting written materials and argument allowed by Subsections A and B of this section. Any extension of time to submit written submittals shall not include the authority to extend the time to file a request for review under this part.
- D.** The action of the secretary or the secretary’s designee on the request for review shall be based on the written materials and argument submitted pursuant to this

section unless the secretary or the secretary's designee schedules a hearing on the request for review as set forth below.

E. The secretary or the secretary's designee may exercise discretion in determining if there is significant public interest for a public hearing and, if so, may provide notice of the time and place of the hearing to the aggrieved party, and may provide notice to interested persons other than the aggrieved party and provide for public participation in the review process described in this section, as the secretary or the secretary's designee deems appropriate.

F. If the secretary chooses to hold a hearing as described in Subsection E of this section, the secretary shall hold the hearing within 60 days after receiving the written materials and argument described in Subsection A or after receiving the request for a hearing, whichever occurs last. In the event the department holds a hearing, the cost of the court reporter and transcript shall be paid by the party that requested the hearing. The hearing shall be conducted in accordance with 20.1.5 NMAC.

G. The action of the secretary or the secretary's designee on the request for review shall be by written order and shall state the decision and the reason therefore. The secretary or the secretary's designee shall send a copy of the order to the aggrieved party and furnish a copy to department staff promptly after the order is entered. This written order shall be the department's final action on the request for review. Any judicial review of this final order shall be as provided by applicable law. [20.5.125.2502 NMAC - N, 07/24/2018]

History of 20.5.125 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.
 EIB/USTR-10, Underground Storage Tank Regulations - Part X -

Administrative Review, filed 9/12/88. EIB/USTR-10, Underground Storage Tank Regulations - Part X - Administrative Review, filed 8/4/89.

History of Repealed Material:
 20 NMAC 5.10, Underground Storage Tanks, Administrative Review (filed 2/27/97), repealed 8/15/03.
 20.5.10 NMAC, Petroleum Storage Tanks, Administrative Review (filed 7/16/03), repealed 6/15/09.
 20.5.10 NMAC, Petroleum Storage Tanks, Administrative Review (filed 6/15/09), repealed 7/24/18.

Other History:
 EIB/USTR-10, Underground Storage Tank Regulations - Part X - Administrative Review, (filed 8/4/89) renumbered, reformatted and replaced by 20 NMAC 5.10, effective 11/5/95.
 20 NMAC 5.10, Underground Storage Tanks, Administrative Review, (filed 10/6/95) was replaced by 20 NMAC 5.10, Underground Storage Tanks, Administrative Review, effective 4/1/97.
 20 NMAC 5.10, Underground Storage Tanks, Administrative Review, (filed 2/27/97) was renumbered, reformatted and replaced by 20.5.10, NMAC, Petroleum Storage Tanks, Administrative Review, effective 8/15/03.
 20.5.10 NMAC, Petroleum Storage Tanks, Administrative Review, (filed 7/16/03) was replaced by 20.5.10 NMAC, Petroleum Storage Tanks, Administrative Review, effective 6/15/09.
 20.5.10 NMAC, Petroleum Storage Tanks, Administrative Review (filed 6/15/09), was renumbered, reformatted, and replaced by 20.5.125 NMAC, Petroleum Storage Tanks, Administrative Review, effective 7/24/18.

FINANCE AND ADMINISTRATION, DEPARTMENT OF

The Department of Finance and Administration, approved at its 7/6/2018 hearing, to repeal its rule 2.40.2 NMAC - Governing

the Approval of Contracts for the Purchase of Professional Services (filed 12/23/2004) and replace it with 2.40.2 NMAC - Governing the Approval of Contracts for the Purchase of Professional Services, adopted on 07/09/2018 with amendments and effective 7/24/2018.

FINANCE AND ADMINISTRATION, DEPARTMENT OF

**TITLE 2 PUBLIC FINANCE
 CHAPTER 40 EXPENDITURE OF PUBLIC FUNDS
 PART 2 GOVERNING THE APPROVAL OF CONTRACTS FOR THE PURCHASE OF PROFESSIONAL SERVICES**

2.40.2.1 ISSUING AGENCY: Department of Finance and Administration (DFA). [2.40.2.1 NMAC - Rp, 2.40.2.1 NMAC, 7/24/2018]

2.40.2.2 SCOPE:
A. The contracts review bureau of the department of finance and administration shall review and approve all professional services contracts which result in expenditures greater than five thousand dollars (\$5,000), including applicable gross receipts tax, and all amendments to those contracts for all state agencies except as provided in Subsections B and C of Section 2.40.2.2 NMAC of this rule. Contracts expending public funds in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978 as amended are included within the scope of this rule.

B. The following state agencies are currently exempt from submitting professional services contracts and amendments through the contracts review bureau of the department of finance and administration:
(1) state agencies within the judicial branch of government as defined by the New

Mexico Constitution, Article VI;

(2) state agencies within the legislative branch of government as defined by the New Mexico Constitution, Article IV;

(3) state educational institutions as defined by the New Mexico Constitution, Article XII, Section 11 and Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978;

(4) the state fair for only those contracts exempted pursuant to Subsection H of Section 13-1-99 NMSA 1978;

(5) the New Mexico public school insurance authority pursuant to Subsection F of Section 22-29-6 and 22-29-8 NMSA 1978 for contracts for procuring goods or services and paying for insurance or insurance-related services;

(6) the New Mexico mortgage finance authority pursuant to Section 58-18-20 NMSA 1978; and

(7) other state agencies exempt by statute.

C. Pursuant to Section 6-5-9 NMSA 1978, the secretary of the department of finance and administration may exempt a state agency's contracts from contracts review bureau review and approval when the secretary of the department of finance and administration determines that efficiency or economy so requires. A state agency seeking an exemption must:

(1) apply in writing to the secretary of the department of finance and administration; and

(2) meet all of the following requirements:

(a) issue its own warrants;

(b) be exempt from prior submission of vouchers or purchase orders to the financial control division of the department of finance and administration;

(c) receive the majority of its money from non-general fund sources;

(d)

maintain pre-audit and post-audit fiscal accounting controls;

(e) maintain and operate its own administrative unit for procurement and controls its own encumbrance of funds available for professional service contracts;

(f) provide administrative control and review of professional services contracts through its own administrative unit; and

(g) employs in-house counsel to prepare, review, and approve professional services contracts for form and legal sufficiency and to advise the state agency with respect to all applicable laws and regulations; provided, however, that the attorney general shall also review and approve all contracts subject to Paragraph (1) of Subsection C of 2.40.2.10 NMAC of this rule prior to approval and execution by the state agency. [2.40.2.2 NMAC - Rp, 2.40.2.2 NMAC, 7/24/2018]

2.40.2.3 STATUTORY AUTHORITY:

A. Sections 13-1-118 and 13-1-125 NMSA 1978 authorize the department of finance and administration to review professional services contracts of state agencies as to form, legal sufficiency, and budgetary requirements if required by its regulations.

B. Section 6-5-3 NMSA 1978 provides that before any state agency enters into a contract expending public funds, the financial control division of the department of finance and administration shall determine the authority for such proposed expenditure. After the authority for the expenditure is determined, the appropriate fund shall be shown by the financial control division to be encumbered to the extent of the proposed expenditure. The financial control division may request, and the state agency shall provide, such documentation and other information as the financial control division deems necessary to justify the state

agency's determination of authority. The financial control division may disapprove the proposed expenditure if it determines that the justification is inadequate or is not substantiated by law.

C. Section 6-5-6 NMSA 1978 requires the financial control division of the department of finance and administration to determine that the proposed expenditure does not exceed the state agency's appropriation, does not exceed the periodic allotment made to the state agency or the unencumbered balance of funds at its disposal. The state agency shall determine that a proposed expenditure is for a public benefit and purpose consistent with the related appropriation and is necessary to carry out the statutory mission of the state agency prior to committing the state to the transaction.

D. Subsection E of 9-1-5 and Subsection E of 9-6-5 NMSA 1978 provide that after notice and hearing, the secretary of the department of finance and administration may make and adopt such reasonable administrative and procedural rules and regulations as necessary to carry out the duties of the department of finance and administration and its divisions. [2.40.2.3 NMAC - Rp, 2.40.2.3 NMAC, 7/24/2018]

2.40.2.4 DURATION: Permanent.

[2.40.2.4 NMAC - Rp, 2.40.2.4 NMAC, 7/24/2018]

2.40.2.5 EFFECTIVE DATE: July 24, 2018 unless a later date is cited at the end of a section. [2.40.2.5 NMAC - Rp, 2.40.2.5 NMAC, 7/24/2018]

2.40.2.6 OBJECTIVE: The purpose of this rule is to establish the procedures state agencies must follow and the requirements state agencies must meet in drafting, entering into, and seeking approval of professional services contracts. These procedures ensure compliance with Sections 6-5-3, 6-5-6, 13-1-118 and 13-1-125

NMSA 1978 as amended.

[2.40.2.6 NMAC - Rp, 2.40.2.6 NMAC, 7/24/2018]

2.40.2.7 DEFINITIONS:

A. "Bureau" means the contracts review bureau of the department of finance and administration.

B. "Contract" means any agreement for the provision of professional services.

C. "Contract brief" means the bureau paper form or electronic version which shall accompany all professional services contracts and amendments submitted to the bureau.

D. "Contractor" as defined in Section 13-1-43 NMSA 1978 means any business having a contract with a state agency.

E. "Department or DFA" means the department of finance and administration.

F. "Form" means, at a minimum, that all contracts and amendments contain the provisions required by the bureau, including but not limited to, a scope of work consistent with the request for proposals issued by the state agency if the contract was procured by a request for proposals and performance measures when required and as defined by and in accordance with the Accountability in Government Act, Sections 6-3A-1 through 6-3A-9 NMSA 1978 and subsequent amendments.

G. "Legal sufficiency" means, at a minimum, that all contracts and amendments contain the provisions required by law and that all required signatures have been obtained.

H. "Procurement" as defined by Section 13-1-74 NMSA 1978 means purchasing, renting, leasing, lease purchasing or otherwise acquiring items of personal property, services or construction and includes all procurement functions, including but not limited to, preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of the contract, and contract administration.

I. "Procurement Code" means Sections 13-1-28 to 13-1-199 NMSA 1978, as amended.

J. "Professional services" as defined by Section 13-1-76 NMSA 1978 means the services of architects, archaeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, and persons or businesses providing similar services, including information system resources professional services, and other such services which may be designated as professional services by a determination issued by the state purchasing agent or designee.

K. "Regulation" as defined by Section 13-1-80 NMSA 1978 means any rule, order, statement or policy, as amended, issued by a state agency or a local public body that affects persons not members or employees of the issuer.

L. "Retroactive approval to a contract or a contract amendment" means approval of a contract or contract amendment that was submitted to the bureau and approved by the DFA secretary or designee pursuant to 2.40.2.13 NMAC of this rule after the contractor has begun work pursuant to a request to perform work from a state agency employee or public officer with authority to make such a request.

M. "DFA secretary" means the secretary of the department of finance and administration.

N. "Sole source contract or amendment to sole source contract" means a contract or amendment which fulfills the requirements of Sections 13-1-118, 13-1-126 and 13-1-126.1 NMSA 1978, as amended.

O. "State agency" means any department, agency, commission, council, board, advisory board, committee, or institution of the state of New Mexico, and does not include local public bodies.
[2.40.2.7 NMAC - Rp, 2.40.2.7 NMAC, 7/24/2018]

2.40.2.8 DELEGATION OF APPROVAL AUTHORITY:

A. The bureau shall review all contracts and contract amendments for professional services with state agencies as to form, and budgetary requirements.

B. The bureau shall consult with the department's legal counsel as needed regarding any issues of legal sufficiency of a state agency's contracts and contract amendments for professional services.

C. The DFA secretary shall delegate, in writing to certain members of the bureau, the authority to approve professional services contracts which result in expenditures greater than five thousand dollars (\$5,000), including gross receipts tax, and all amendments to those contracts except retroactive approval to contracts and contract amendments and sole source contracts and amendments to sole source contracts as provided herein.

[2.40.2.8 NMAC - Rp, 2.40.2.8 NMAC, 7/24/2018]

2.40.2.9 FORM AND SUBMISSION:

A. All contracts and subsequent amendments shall be in a form and contain such provisions as required by the bureau, including but not limited to, a scope of work consistent with the request for proposals issued by the state agency if the contract was procured by a request for proposals and performance measures when required and as defined by and in accordance with the Accountability in Government Act, Sections 6-3A-1 through 6-3A-9 NMSA 1978 and subsequent amendments.

B. All contracts and amendments shall:
(1) be accompanied by a contract brief being in such form and containing such information as may be required by the bureau;

(2) be accompanied by a document prescribed by the financial control division of the department showing that funds have been encumbered to

the extent of the contract, including any amendments to that contract; if the contract term includes more than one fiscal year, the contract must be accompanied by an encumbrance for the current fiscal year amount or, up to the total amount of the current appropriation available for that contract;

(3) be accompanied by a written request for approval from the secretary of the contracting state agency or designee if the contract is subject to Paragraph (1) of Subsection C of 2.40.2.10 NMAC of this rule; and

(4) comply with New Mexico law regarding indemnification and insurance. [2.40.2.9 NMAC - Rp, 2.40.2.9 NMAC, 7/24/2018]

2.40.2.10 REVIEW PROCEDURES:

A. State agencies must submit to the bureau for review:

(1) sole source contracts;

(2) amendments to sole source contracts;

(3) retroactive approval to contracts; and

(4) retroactive approval to contract amendments.

B. Bureau review:

(1) The bureau shall review all contracts or contract amendments for form, budgetary requirements and compliance with the requirements prescribed on the contract brief.

(2) No contract or contract amendment shall become binding or effective until signed and dated by a member of the bureau with contract approval authority.

C. Other review:

(1) Prior to the bureau's review and at the bureau's request, the attorney general shall review all contracts which may violate conflict of interest provisions of the Governmental Conduct Act, Sections 10-16-1 to 10-16-18 NMSA 1978.

(2) The bureau may submit any contract or

amendment to the attorney general or other legal counsel for review if the bureau is aware of legal issues concerning the contract or the amendment.

[2.40.2.10 NMAC - Rp, 2.40.2.10 NMAC, 7/24/2018]

2.40.2.11 SMALL

PURCHASES: A contract for professional services having a value over five thousand dollars (\$5,000) excluding applicable gross receipts taxes, but not exceeding the amount set forth in Section 13-1-125 NMSA 1978 except for the services of architects, landscape architects engineers, or surveyors for state public works projects, may be procured in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978.

[2.40.2.11 NMAC - Rp, 2.40.2.11 NMAC, 7/24/2018]

2.40.2.12 SOLE SOURCE CONTRACT OR AMENDMENT TO SOLE SOURCE CONTRACT:

A. A contract may be awarded without competitive sealed proposals, regardless of the estimated cost, when a central purchasing office of a contracting state agency makes a written determination, signed by the secretary of the contracting state agency or designee, which states that a good-faith review of available sources has been conducted and that there is only one source for the required professional services. The written determination and the dollar amount of the contract shall be submitted to the bureau for review and approval by the DFA secretary or designee and shall include the following information:

(1) a detailed, sufficient explanation of the reasons, qualifications, proprietary rights, or unique capabilities that make the prospective contractor a sole source;

(2) an explanation of the criteria developed and specified by the state agency as necessary to perform the contract and upon which the state agency reviewed available sources;

(3) a

description of the procedures used by the state agency in conducting a good faith review of available sources, including without limitation, a narrative description of all steps taken by the state agency as evidence of the good-faith review performance such as:

(a) researching trade publications and industry newsletters;

(b) reviewing telephone books or other advertisements;

(c) reviewing current contract;

(d) contacting similar service providers; and

(e) reviewing the state purchasing agents vendor list; and

(4) a list of all businesses contacted and an explanation of why those businesses could not perform the contract, or, a reasonable explanation of why the state agency has determined that no businesses, besides the prospective contractor, exist.

B. The bureau must obtain written approval of the agency's sole source determination from the DFA secretary or designee prior to approving a sole source contract or amendment to a sole source contract.

[2.40.2.12 NMAC - Rp, 2.40.2.12 NMAC, 7/24/2018]

2.40.2.13 RETROACTIVE APPROVAL FOR A CONTRACT OR CONTRACT AMENDMENT:

A. The Procurement Code, Section 13-1-102, NMSA 1978, as amended, requires that all non-exempt procurement (Section 13-1-98 NMSA 1978) by state agencies shall be achieved by competitive sealed bids or competitive sealed proposals except for small purchases, sole source procurements, emergency procurements, existing contracts and procurements from antipoverty program business. For professional services, the proposal and procurement process are not complete until a written contract or contract

amendment is signed by the agency and the contractor and is approved by the DFA secretary or designee and approved by the bureau.

B. For retroactive approval of contracts and contract amendments which fulfill all of the requirements of this rule and the Procurement Code, DFA will approve the date requested in writing by the agency on the brief accompanying the document as long as the requested approval date is within thirty days of the first day of each fiscal year.

C. For retroactive approval of contracts and contract amendments apart from the approval given pursuant to the provisions 2.40.2.13 NMAC of this rule, DFA may grant additional retroactive approval to a contract or contract amendment, based upon rare and exceptional circumstances, where all of the following conditions are met:

(1) the professional services performed without DFA's prior approval of the contract did not occur as the result of repeated agency mistakes or willful misconduct;

(2) the failure to obtain DFA's retroactive approval will prevent the state agency from fulfilling its statutory obligations;

(3) the state agency provides to DFA a written, factual, detailed explanation of the matters described in Paragraphs (1) and (2) of Subsection C of 2.40.2.13 NMAC, certified to be true by signature of the head of the state agency;

(4) the state agency requested, through a public officer or employee with authority to make such a request, the contractor to perform professional services that were then actually performed by the contractor in good faith reliance that it would be paid for those professional services.

D. The Procurement Code, Section 13-1-182 NMSA 1978, as amended, governs situations in which DFA has denied a request for retroactive approval of a contract or contract amendment due to the state agency's failure to meet the

requirements of Subsections B or C of 2.40.2.13 NMAC of this rule.

[2.40.2.13 NMAC - Rp, 2.40.2.13 NMAC, 7/24/2018]

2.40.2.14 EMERGENCY

PROCUREMENT: An emergency procurement of professional services may be made under the conditions provided in the Procurement Code. Records of any emergency procurement of professional services, including the written determination of the basis for the emergency procurement being relied on by the state agency as justification for the emergency procurement, shall be maintained by the state agency for a minimum of three years and shall be made available by the state agency to the financial control division upon request.

[2.40.2.14 NMAC - Rp, 2.40.2.14 NMAC, 7/24/2018]

2.40.2.15 COMPLIANCE:

State agencies must comply with federal and state statutes, rules, regulations and policies and shall have their state agency's legal counsel review all contracts and contract amendments certifying in writing that they are legally sufficient prior to submission to the bureau. Wrongful or mistaken approval by the bureau shall not be a defense to an action brought by or against the state agency on a contract.

[2.40.2.15 NMAC - Rp, 2.40.2.15 NMAC, 7/24/2018]

2.40.2.16 RECORDS:

A. Record inspection, record retention and record destruction relating to contracts shall be conducted in accordance with the Inspection of Public Records Act, Sections 14-2-1 to 14-2-12 NMSA 1978; the Public Records Act, Sections 14-3-1 to 14-3-23 NMSA 1978; and with Section 13-1-128 NMSA pertaining to sole source and emergency procurement; and Section 13-1-116 NMSA 1978 of the Procurement Code.

B. The bureau will retain original contracts, any subsequent amendments, and contract

briefs in accordance with provisions of the Inspection of Public Records and Public Records Act.

[2.40.2.16 NMAC - Rp, 2.40.2.16 NMAC, 7/24/2018]

2.40.2.17 RULE FILING:

This rule shall be filed in accordance with the State Rules Act, Sections 14-4-1 to 14-4-11 NMSA 1978 and shall become effective upon publication in the New Mexico Register.

[2.40.2.17 NMAC - Rp, 2.40.2.17 NMAC, 7/24/2018]

HISTORY OF 2.40.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: DFA 76-3, Technical and Professional Services and State Highway Department Contracts, June 25, 1976, filed 7/13/1976.

DFA 77-6, Technical and Professional Service Contracts, August 15, 1977, filed 8/22/1977.

DFA 78-2.1, Governing the Approval of Contracts for the Purchase of Professional Services, filed 6/30/1978. DFA Rule No. 84-3, Governing the Approval of Contracts for the Purchase of Professional Services, filed 6/28/1984.

DFA Rule No. 85-1, Governing the Approval of Contracts for the Purchase of Professional Services, filed 7/10/1985.

DFA 87-1, Governing the Approval of Contracts for the Purchase of Professional Services, filed 6/30/1987.

History of Repealed Material:

2.40.2 NMAC - Governing the Approval of Contracts for the Purchase of Professional Services, filed 12/23/2004 - Repealed effective 7/24/2018.

NMAC History:

2.40.2 NMAC - Governing the Approval of Contracts for the Purchase of Professional Services, filed (12/23/2004) was replaced by 2.40.2 NMAC - Governing the Approval of Contracts for the Purchase of Professional Services effective 7/24/2018.

**GAME AND FISH,
DEPARTMENT OF**

**TITLE 19 NATURAL
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING
PART 6 MIGRATORY
GAME BIRD**

19.31.6.1 ISSUING

AGENCY: New Mexico Department of game and fish.

[19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC, 9-1-18]

19.31.6.2 SCOPE:

Sportspersons interested in migratory game bird management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978 and Title 19 NMAC.

[19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC, 9-1-18]

19.31.6.3 STATUTORY

AUTHORITY: Section 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC, 9-1-18]

19.31.6.4 DURATION:

September 1, 2018 - March 31, 2019.

[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 9-1-18]

19.31.6.5 EFFECTIVE

DATE: September 1, 2018 unless a later date is cited at the end of a section.

[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 9-1-18]

19.31.6.6 OBJECTIVE:

Establishing seasons on dove, band-tailed pigeon, sandhill crane, American coot, common moorhen, common snipe, ducks, geese, sora, Virginia rail, and setting falconry seasons for migratory game birds.

[19.31.6.6 NMAC - Rp, 19.31.6.6

NMAC, 9-1-18]

19.31.6.7 DEFINITIONS:

Areas, species, non-toxic shot, and possession limit defined.

A. "Arrows" shall mean only those arrows or bolts having broadheads with steel cutting edges.

B. "Baiting" shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take migratory game birds.

C. "Bernardo pond unit" shall mean that portion of Bernardo wildlife management area 600 feet south of U.S. 60 and west of the unit 7 drain.

D. "Bernardo youth unit" shall mean that portion of Bernardo wildlife management area immediately south of the Quagmire and east of the unit 7 drain.

E. "Bow" shall mean compound, recurve, or long bow. Sights on bows shall not project light; however, illuminated pins/reticles and scopes of any magnification are allowed.

F. "Central flyway" shall mean that portion of New Mexico east of the continental divide, with the exception of the Jicarilla Apache Indian reservation.

G. "Crossbows" shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light; however, illuminated pins/reticles and scopes of any magnification are allowed.

H. "Dark goose" shall mean Canada goose or white-fronted goose.

I. "Department" shall mean the New Mexico department of game and fish.

J. "Director" shall mean the director of the New Mexico department of game and fish.

K. "Dove north zone" (north zone) shall mean that portion

of New Mexico north of I-40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

L. "Dove south zone" (south zone) shall mean that portion of New Mexico south of I-40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

M. "Eastern New Mexico sandhill crane hunt area" (eastern) shall mean that area in the following counties: Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt.

N. "Estancia valley (EV) sandhill crane hunt area" shall mean that area beginning at Mountainair bounded on the west by N.M. highway 55 north to N.M. 337, north to N.M. 14, and north to Interstate 25; on the north by Interstate 25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to N.M. 55 in Mountainair.

O. "Falconry" shall mean hunting migratory game birds using raptors.

P. "Federal youth waterfowl hunting days" shall mean the special seasons where only those under 18 years of age may hunt ducks and geese. A supervising adult at least 18 years of age must accompany the youth hunter. The adult may not hunt ducks; but may participate in other seasons that are open on the special youth days.

Q. "License year" shall mean the period from April 1 through March 31.

R. "Light geese" shall mean snow geese, blue phase snow geese, and Ross's geese.

S. "Light geese conservation order" shall mean those methods, bag and possession limits, and dates approved by the U. S. fish and wildlife service (USFWS) towards reducing over-abundant light goose populations.

T. "Middle Rio Grande valley (MRGV) dark goose hunt area" shall mean Sierra,

Socorro and Valencia counties.

U. “Middle Rio Grande valley (MRGV) sandhill crane hunt area” shall mean Valencia and Socorro counties.

V. “Migratory game bird” shall mean band-tailed pigeon, mourning dove, white-winged dove, sandhill crane, American coot, common moorhen, common snipe, ducks, geese, sora, and Virginia rail.

W. “Modern firearms” shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

X. “Muzzle-loader or muzzle-loading firearms” shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

Y. “Non-toxic shot” shall mean that non-toxic shot approved for use by the USFWS.

Z. “North zone” shall mean that portion of the Pacific flyway north of I-40 from the Arizona-New Mexico border to the continental divide; and that portion of the central flyway north of I-40 from the continental divide to Tatumcari and U.S. 54 at its junction with I-40 at Tatumcari to the New Mexico-Texas border.

AA. “Pacific flyway” shall mean that portion of New Mexico west of the continental divide including the Jicarilla Apache Indian reservation.

BB. “Possession limit” shall mean three times the daily bag limit one can have in their ownership, except where otherwise defined.

CC. “Quagmire” shall mean that portion of Bernardo wildlife management area 600 feet south of U.S. 60 and east of the unit 7 drain.

DD. “Regular band-tailed pigeon hunting area” (regular

BPHA) shall mean that portion of New Mexico not included in the southwest band-tailed pigeon hunt area.

EE. “Retention” or “retain” shall mean the holding of in captivity.

FF. “South zone” shall mean that portion of the Pacific flyway south of I-40 from the Arizona-New Mexico border to the continental divide; and that portion of the central flyway south of I-40 from the continental divide to Tatumcari and U.S. 54 at its junction with I-40 at Tatumcari to the New Mexico-Texas border.

GG. “Southwest band-tailed pigeon hunting area” (southwest BPHA) shall mean that portion of New Mexico both south of U.S. 60 and west of I-25.

HH. “Southwest New Mexico sandhill crane hunt area” (SW) shall mean that area bounded on the south by the New Mexico-Mexico border; on the west by the New Mexico-Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/Mexico border.

II. “Wildlife management areas” or “WMAs” shall mean those areas as described in 19.34.5 NMAC, Wildlife Management Areas.

JJ. “Unlimited” shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

KK. “Youth” shall mean those younger than 18 years of age except where otherwise defined. [19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 9-1-18]

19.31.6.8 ADJUSTMENT OF LICENSES, PERMITS, AND HARVEST LIMITS: The director, with the verbal concurrence of the chairperson or their designee, may adjust the number of licenses, permits,

or harvest limits, up or down by no more than twenty percent to address significant changes in population levels or habitat availability. This adjustment may be applied to any or all of the entry hunt codes.

[19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 9-1-18]

19.31.6.9 LICENSE AND APPLICATION REQUIREMENTS:

A. License: A Harvest Information Program (HIP) number shall be required. Waterfowl hunters 16 years of age and older are required to have in their possession a federal migratory bird hunting and conservation stamp (duck stamp). It shall be unlawful to take or attempt to take migratory birds without a HIP number, or duck stamp if required.

(1) Any person taking or attempting to take sandhill cranes in the eastern hunt area must have a valid license and a free sandhill crane hunting permit obtained from department offices or website.

(2) For EV sandhill crane, MRGV sandhill crane, MRGV youth-only sandhill crane, and SW sandhill crane, in addition to a valid license, a special permit obtained by drawing shall be required.

(3) For the light goose conservation order: in addition to a valid license, a free light goose conservation order permit obtained from department offices or website shall be required.

(4) For band-tailed pigeon hunting: in addition to a valid license, a free band-tailed pigeon permit obtained from department offices or website shall be required.

B. Valid dates of license or permit: All permits or licenses shall be valid only for the dates, legal sporting arms, bag limit and area printed on the permit or license.

C. Applications: Applications for EV sandhill crane, MRGV sandhill crane, SW sandhill crane, and MRGV youth-only sandhill crane hunt permits shall be submitted

via the department website.

(1) For permits issued by drawing, the appropriate application fee as defined by 19.30.9 NMAC shall be required by each applicant per application submitted.

(2) No more than four persons may apply per application. For the MRGV youth-only sandhill crane hunt, no more than two persons may apply per application.

(3) It shall be unlawful to submit more than one application per species per year, unless otherwise specifically allowed by rule. Those submitting more than one application per species will result in the rejection of all applications for that species.

(4) Applications may be rejected if such applications do not supply adequate information.

(5) Applicants may apply for a first, second and third choice of seasons, if applicable. A maximum of one permit per species hunt code will be awarded to successful applicants unless otherwise specifically allowed by rule.

(6) All applications must be submitted via the department website unless otherwise specifically allowed by rule.

(7) The application deadline date for the EV, MRGV, MRGV youth-only, and SW sandhill crane hunt permits shall be on date(s) set by the state game commission. If any permits are available after the drawing, those permits may be sold online via a secondary sale.

(8) If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department.

(9) If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which they applied may submit a new application for a permit if such permits remain

available.

D. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth-only hunt, including federal youth waterfowl hunt days.

[19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 9-1-18]

19.31.6.10 MANNER AND METHODS FOR MIGRATORY GAME BIRDS:

A. Season: It shall be unlawful to take or attempt to take migratory game birds during closed seasons.

B. Hours: Migratory game birds may be hunted or taken only during the period from one-half hour before sunrise to sunset, unless otherwise specifically allowed or restricted by rule.

(1) On the following wildlife management areas: Bernardo, Casa Colorada, Charette lake, Jackson lake, La Joya, McAllister lake, Wagon Mound, Tucumcari, and W.S. Huey; and the Bottomless lakes overflow, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. unless otherwise stated in rule. For hunting September teal on Bernardo and La Joya WMAs, hunting hours are from one-half hour before sunrise to sunset.

(2) During the light goose conservation order hunt dates, hunting hours shall mean from one-half hour before sunrise to one-half hour after sunset, excluding the WMAs listed in Paragraph (1) above.

C. Bag limit: It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation, unless otherwise specifically allowed by rule. There shall be no daily bag or possession limit for light geese during the light goose conservation order hunt dates.

D. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize any migratory game birds or parts that are illegally obtained or possessed.

E. Use of bait: It shall be unlawful for anyone to take or attempt to take any migratory game bird by use of bait such as grain, salt or other feed.

F. Live animals: It shall be unlawful to use live animals as a decoy in taking or attempting to take any migratory game bird.

G. Use of calling devices: It shall be unlawful to use any electronically or mechanically recorded calling device in taking or attempting to take any migratory game bird, unless otherwise specifically allowed by rule. During the light goose conservation order hunt dates, electronic calling devices are allowed.

H. Legal sporting arms and ammunition:

(1) The following are legal sporting arms for migratory game birds:

- (a) shotguns no larger than 10 gauge firing shot, shotguns shall not be capable of holding more than three shells;
- (b) muzzle-loading shotguns firing shot;
- (c) bows and arrows;
- (d) crossbows and bolts; and
- (e) during the light goose conservation order hunt dates, as listed herein, shotguns capable of holding more than three shells are allowed.

(2) Non-toxic shot use is required for hunting:

- (a) all migratory game bird species, excluding dove, band-tailed pigeon, and eastern sandhill crane; and
- (b) on all state game commission owned lands.

(3) Use of lead shot: It shall be unlawful for any person hunting migratory game birds, other than dove, band-tailed pigeon and eastern sandhill crane, to hunt with or be in possession of any shotgun shells loaded with lead shot or for any person using a muzzleloader to be in possession of

lead shot.

I. Drugs and explosives: It shall be unlawful to use any form of drug on an arrow or bolt, or use arrows or bolts driven by explosives.

J. Proof of species or sex: One fully feathered wing must remain attached to all migratory game birds, except dove and band-tailed pigeon, until the bird has arrived at a residence, taxidermist, meat processing facility, or place of final storage.

K. Sale of migratory game bird parts: It shall be unlawful to sell or barter any parts or feathers from migratory game birds.

L. Lands and waters owned, administered, controlled, or managed by the state game commission:

(1) State wildlife management areas open, species that can be hunted, and days open for hunting (use of vehicles will be restricted to designated areas):

(a) Bernardo WMA:
(i) That portion of the Bernardo WMA south of U.S. 60 is open to teal hunting each day of the September teal season and the federal youth waterfowl days. That portion of the Bernardo WMA north of U.S. 60 is closed except during the light goose conservation order.

(ii) The Quagmire shall be open only on Tuesday, Thursday, and Sunday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) The Bernardo pond unit shall be open for general waterfowl hunting on Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) The Bernardo youth unit shall be open for youth waterfowl hunting on

Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(b) The Charette lake WMA shall be open each day of the federal youth waterfowl days and on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons. Charette lake WMA is closed during the September teal season.

(c) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, and Elliot S. Barker wildlife management areas shall be open for hunting dove and band-tailed pigeon during established seasons.

(d) The portion of Jackson lake WMA west of N.M. 170 shall be open on Mondays, Wednesdays, and Saturdays to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe. The portion of Jackson lake WMA east of N.M. 170 shall be open to falconry-only migratory game bird hunting during established seasons.

(e) The lesser prairie-chicken management areas shall be open to hunt dove during established seasons.

(f) La Joya WMA:
(i) the entire La Joya WMA shall be open to teal hunting each day of the September teal season and each day of the federal youth waterfowl days;

(ii) that portion of La Joya WMA north of the main east/west entrance road and west of the railroad tracks shall be open on Saturdays, Mondays, and Wednesdays to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule;

(iii) that portion of La Joya WMA south of the main east/west entrance road and west of the railroad tracks shall be open on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule;

(iv) that portion of La Joya WMA east of the railroad tracks shall be open to hunt dove, ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(g) The McAllister lake WMA shall be open each day of the federal youth waterfowl days, each day of the September teal season, and on Monday, Wednesday, and Saturday to hunt ducks, dark and light geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons. McAllister lake WMA shall also be open each day of the dove season for dove hunting.

(h) The Wagon Mound WMA shall be open to teal hunting each day of the September teal season and federal youth waterfowl days and open on Monday, Wednesday, and Saturday for ducks, geese, Virginia rail, sora, common moorhen, American coot and common snipe during established seasons.

(i) The Socorro-Escondida wildlife management area shall be open for migratory game bird hunting during established seasons.

(j) The Tucumcari WMA shall be open each day of the September teal and federal youth waterfowl days and on Saturday, Sunday, and Wednesday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(k) The William S. Huey WMA shall be open for dove hunting only on

Monday, Wednesday, and Saturday during established statewide seasons.

(2) The Hammond tract WMA is open for waterfowl hunting during established seasons.

(3) The Retherford tract WMA is open for waterfowl hunting during established seasons.

(4) The Sandia ranger district of the Cibola national forest shall be open to falconry, bow and crossbow only migratory game bird hunting during established seasons.

(5) All wildlife management areas shall be open to falconry waterfowl hunting each day of the established falconry season, unless otherwise restricted by rule.

M. Areas closed to migratory game bird hunting: That portion of the stilling basin below Navajo dam lying within a line starting from N.M. 511 at the crest of the bluff west of the Navajo dam spillway and running west along the fence approximately one-quarter mile downstream, southwest along the fence to N.M. 511 to the Navajo dam spillway, across the spillway, and to the crest of the bluff.

N. Regulations pertaining to boats, other floating devices, and motors:

(1) On Bernardo, La Joya, Wagon Mound and Jackson lake WMAs, only boats and other floating devices using no motors shall be permitted during waterfowl season.

(2) On Tucumcari WMA, only boats and other floating devices using electric motors or with motors that are not in use shall be permitted.

(3) On Charette and McAllister lakes boats and other floating devices with or without motors shall be permitted; provided, however, that boats or floating devices shall not be operated at greater than normal trolling speed.

(4) Department personnel or persons authorized by the director may use gasoline powered outboard motors on all lakes mentioned in this chapter while performing official duties.

[19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 9-1-18]

19.31.6.11 SPECIES, OPEN AREAS, SEASON DATES, AND DAILY BAG LIMITS: 2018-2019 season, all dates are 2018 unless otherwise specified. Possession limits are three times the daily bag limit unless otherwise specified.

Species	open areas	season dates	daily bag limit
mourning and white-winged dove	north zone	Sept. 1 - Nov. 29	15 (singly or in aggregate)
	south zone	Sept. 1 - Oct. 28 and Dec. 1 - Jan. 1, 2019	
band-tailed pigeon	southwest BPHA	Oct. 1 - 14	2
	regular BPHA	Sept. 1 - 14	
regular season sandhill crane (free permit required)	eastern	Oct. 27 - Jan. 27, 2019	3 (6 in possession)
special season sandhill crane (special draw permit required)	MRGV southwest	Nov. 10 - 11 Oct. 27 - Nov. 4	3 (6 in possession)
	MRGV	Nov. 24 - 25	
	MRGV southwest	Dec. 15 - 16 Jan. 5 - 6, 2019	
	MRGV	Jan. 5 - 6, 2019	
	MRGV	Jan. 12-13, 2019	
	EV	Oct. 27 - Oct. 30	3 (6 in possession)
EV	Nov. 1 - Nov. 4		
	MRGV youth-only	Dec. 1	3

CENTRAL FLYWAY: possession limits are three times the daily bag limit unless otherwise specified.

Species	season dates	daily bag limit
September teal: blue-winged teal, green-winged teal, and cinnamon teal	Sept. 15 - 23	6 (singly or in the aggregate)

ducks	north zone: Oct. 13 - Jan. 16, 2019	6 (singly or in the aggregate); that consists of no more than 5 mallard of which only 2 may be female mallard, (Mexican-like ducks are included towards the mallard bag limit), 3 wood duck, 3 scaup, 2 redhead, 2 hooded merganser, 2 pintail, and 2 canvasback
	south zone: Oct. 24 - Jan. 27, 2019	
youth waterfowl days	north zone: Sept. 29 - 30	
	south zone: Oct. 6 - 7	
American coot	north zone: Oct. 13 - Jan. 16, 2019	15
	south zone: Oct. 24 - Jan. 27, 2019	
common moorhen	Sept. 15 - Nov. 23	1
common snipe	Oct. 13 - Jan. 27, 2019	8
Virginia rail & sora	Sept. 15 - Nov. 23	10 (singly or in the aggregate); 20 in possession
dark goose: Canada & white-fronted geese (regular season closed in Sierra, Socorro, and Valencia counties)	Oct. 13 - Jan. 27, 2019	5
dark goose: special MRGV season	Dec. 22 - Jan. 15, 2019	2 (2 per season)
light goose: Ross's & snow geese	Oct. 13 - Jan. 27, 2019	50 (no possession limit)
light goose conservation order	Feb. 1 - Mar. 10, 2019	no bag or possession limit

PACIFIC FLYWAY: possession limits are three times the daily bag limit unless otherwise specified.

species	season dates	daily bag limit
youth waterfowl days	Oct. 6 - 7	7 (singly or in the aggregate); that consists of no more than 2 female mallard, 2 redhead, 2 pintail, and 2 canvasback
ducks	Oct. 15 - Jan. 27, 2019	
scaup	Oct. 15 - Jan. 8, 2019	3 (as part of the aggregate duck bag)
American coot and common moorhen	Oct. 15 - Jan. 27, 2019	25 daily (singly or in the aggregate)
common snipe	Oct. 15 - Jan. 29, 2019	8
Virginia rail & sora	Sept. 15 - Nov. 23	25 daily (singly or in the aggregate)
goose	north zone: Sept. 22 - Oct. 7 and Oct. 29 - Jan. 27, 2019	4 Canada geese, 10 white-fronted geese, and 20 light geese
	south zone: Oct. 13 - Jan. 27, 2019	

[19.31.6.11 NMAC - Rp, 19.31.6.11 NMAC, 9-1-18]

19.31.6.12 FALCONRY SEASONS: 2018-2019 season, all dates are 2018 unless otherwise specified. Bag limits are three singly or in the aggregate and nine in possession unless otherwise specified.

CENTRAL FLYWAY		
Species	open areas	season dates
mourning and white-winged dove	north	Sept. 1 - Dec. 4 and Dec. 22 - Jan. 2, 2019
	south	Sept. 1 - Nov. 5 and Nov. 22 - Jan. 1, 2019
band-tailed pigeon	southwest BPHA	Oct. 1 - 14
	regular BPHA	Sept. 1 - 14
sora and Virginia rail	all	Sept. 15 - Dec. 30
common snipe	all	Oct. 13 - Jan. 27, 2019
common moorhen	all	Sept. 15 - Dec. 30

ducks	north	Sept. 15 - 23 and Oct. 13 - Jan 16, 2019
	south	Sept. 15 - 23 and Oct. 24 - Jan 27, 2019
goose (light and dark)	all	Oct. 13 - Jan. 27, 2019
goose (dark)	MRGV	Dec. 22 - Jan. 15, 2019
sandhill crane	regular (eastern)	Oct. 13 - Jan. 27, 2019; 3 (6 in possession)
	Estancia valley	Oct. 27 - Dec. 25; 3 (6 in possession)
PACIFIC FLYWAY		
Species	open areas	season dates
mourning and white-winged dove	north	Sept. 1 - Dec. 4 and Dec. 22 - Jan. 2, 2019
	south	Sept. 1 - Nov. 5 and Nov. 22 - Jan. 1, 2019
band-tailed pigeon	southwest BPHA	Oct. 1 - Oct. 14
	regular BPHA	Sept. 1 - Sept. 14
duck	all	Oct. 15 - Jan. 27, 2019
scaup	all	Oct. 15 - Jan. 8, 2019
goose	north	Sept. 22 - Oct. 7 and Oct. 29 - Jan. 27, 2019
	south	Oct. 13 - Jan. 27, 2019
common snipe	all	Oct. 15 - Jan. 29, 2019
coots and common moorhen	all	Oct. 15 - Jan. 27, 2019
sora and Virginia rail	all	Sept. 15 - Nov. 23

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC, 9-1-18]

19.31.6.13 FEDERAL YOUTH WATERFOWL HUNTING DAYS: Requirements for youth hunters to participate in this hunt are as follows:

A. An adult, at least 18 years old, must accompany the youth hunter in the field (the adult may not hunt ducks but may participate in other seasons that are open on the special youth days).

B. Only ducks, coots, and moorhens may be taken by the youth hunter (sandhill cranes, geese or any other migratory game bird species may not be taken unless the season is open).

[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 9-1-18]

19.31.6.14 REQUIREMENTS FOR THE SPECIAL BERNARDO YOUTH WATERFOWL UNIT: Blind selection will be available on a first-come, first-serve basis from one-half hour before sunrise to 1:00 p.m. Youth hunters must be accompanied by a supervising adult who may not hunt. A maximum of four people is allowed per blind, at least fifty percent of which must be youth hunters.

[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 9-1-18]

19.31.6.15 HUNT CODES AND PERMITS NUMBERS FOR THE SPECIAL ESTANCIA VALLEY, MIDDLE RIO GRANDE VALLEY, AND SOUTHWEST NEW MEXICO SANDHILL CRANE SEASONS:

A. The hunting seasons for 2018-2019 are:

hunt location	hunt dates	hunt code	permits
EV	Oct 27 - Oct 30 and Nov. 1 - Nov. 4	SCR-0-101	65
MRGV	Nov. 10 - 11	SCR-0-102	75
MRGV	Nov. 24-25	SCR-0-103	60
MRGV	Dec. 15-16	SCR-0-104	60
MRGV	Jan. 5-6, 2019	SCR-0-105	60
MRGV	Jan. 12-13, 2019	SCR-0-106	60

MRGV, youth only	Dec. 1	SCR-0- 107	24
SW	Oct. 27- Nov. 4	SCR-0-108	70
SW	Jan. 5-6, 2019	SCR-0-109	60

B. Hunters who participate in the EV and MRGV seasons shall be required to check-out at designated check stations when they harvest any sandhill cranes.

C. The department may cancel one or more EV, MRGV or SW sandhill crane hunts if harvest is expected to exceed our federal allocation of greater sandhill cranes.

[19.31.6.15 NMAC - Rp, 19.31.6.15 NMAC, 9-1-18]

HISTORY OF 19.31.6 NMAC:

Pre-NMAC Filing History: The material in this part was derived from that previously filed with the State Records Center & Archives under: Regulation No. 486, Establishing 1967 Seasons On Quail, Pheasants, Prairie Chickens, and Lesser Sandhill (Little Brown) Crane And Additional Seasons On Migratory Waterfowl, filed 9/22/67; Regulation No. 494, Establishing 1968 Seasons On Migratory Waterfowl, Common Snipe, Lesser Sandhill Crane, Scaled, Gambel's, And Bobwhite Quail, Pheasants, And Prairie Chickens, filed 10/2/68; Regulation No. 508, Establishing 1969 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Scaled, Gambel's And Bobwhite Quail, Pheasants, And Prairie Chickens, filed 9/19/69; Regulation No. 527, Establishing 1971 Seasons On Migratory Waterfowl And Lesser Sandhill Cranes, filed 9/10/71; Regulation No. 540, Establishing 1972 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, And Wilson's Swiipe, filed 9/26/72; Regulation No. 551, Establishing 1973 Seasons On Migratory Waterfowl And Lesser Sandhill Crane, filed 8/20/73; Regulation No. 560, Establishing 1974 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 8/21/74; Regulation No. 570, Establishing 1975 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 9/5/75; Regulation No. 578, Establishing 1976 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 8/31/1976; Regulation No. 588, Establishing 1977 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 9/6/1977; Regulation No. 594, Establishing 1978 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/11/1978; Regulation No. 601, Establishing 1979 Seasons on Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 8/30/1979; Regulation No. 606, Establishing 1980 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/3/80; Regulation No. 611, Establishing 1981 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/4/1981; Regulation No. 616, Establishing 1982 Seasons On Migratory Waterfowl, Quail, Pheasants, And Prairie Chickens, filed 9/3/1982; Regulation No. 626, Establishing 1983 Seasons On Migratory Waterfowl, Quail, Pheasants, And Prairie Chickens, filed 9/7/1983; Regulation No. 631, Establishing 1984 Seasons On Migratory Waterfowl, filed 8/31/1984; Regulation No. 638, Establishing 1985 Seasons On Migratory Waterfowl, filed 9/11/1985; Regulation No. 643, Establishing 1986-1987 Seasons On Migratory Birds, filed 8/24/1987; Regulation No. 660, Establishing 1988-1989 Seasons On Migratory Birds, filed 6/28/1988; Regulation No. 669, Establishing 1989-1990 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Sandhill Crane, Band-tailed Pigeon, Dove, And Setting Falconry Seasons, filed 10/5/1989; Regulation No. 680, Establishing 1990-1991 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 9/28/1990; Regulation No. 687, Establishing 1991-1992 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 8/6/1991; Regulation No. 698, Establishing 1991-92 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 8/6/1991; Regulation No. 698, Establishing 1992-1993 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry seasons, filed 9/15/1992; Regulation No. 704, Establishing 1993-1994 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 3/11/1993; Regulation No. 707, Establishing The 1994-1995, 1995-1996, 1996-1997 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe, And Setting Falconry Seasons, filed 7/28/1994; Regulation No. 708, Establishing The 1994-1995, 1995-1996, And 1996-1997 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe, And Setting Falconry Seasons, filed 9/7/1994.

NMAC History:

19 NMAC 31.6, Waterfowl, filed 8-31-1995

19.31.6 NMAC, Waterfowl, filed 8-15-2000

19.31.6 NMAC, Waterfowl, filed 8-26-2002

19.31.6 NMAC, Waterfowl, filed 8-12-2003
 19.31.6 NMAC, Waterfowl, filed 8-2-2004
 19.31.6 NMAC, Waterfowl, filed 8-8-2005
 19.31.6 NMAC, Waterfowl, filed 8-1-2006
 19.31.6 NMAC, Waterfowl, filed 8-16-2007
 19.31.6 NMAC, Migratory Game Bird, filed 8-13-2008
 19.31.6 NMAC, Migratory Game Bird, filed 8-17-2009
 19.31.6 NMAC, Migratory Game Bird, filed 8-2-2010
 19.31.6 NMAC, Migratory Game Bird, filed 8-1-2011
 19.31.6 NMAC, Migratory Game Bird, filed 8-14-2012
 19.31.6 NMAC, Migratory Game Bird, filed 8-29-2013

History of Repealed Material:

19.31.6 NMAC, Waterfowl, filed 8-15-2000 - duration expired 3-31-2002
 19.31.6 NMAC, Waterfowl, filed 8-26-2002 - duration expired 3-31-2003
 19.31.6 NMAC, Waterfowl, filed 8-12-2003 - duration expired 3-31-2004
 19.31.6 NMAC, Waterfowl, filed 8-2-2004 - duration expired 3-31-2005
 19.31.6 NMAC, Waterfowl, filed 8-8-2005 - duration expired 3-31-2006
 19.31.6 NMAC, Waterfowl, filed 8-1-2006 - duration expired 3-31-2007
 19.31.6 NMAC, Waterfowl, filed 8-16-2007 - duration expired 3-31-2008
 19.31.6 NMAC, Migratory Game Bird, filed 8-13-2008 - duration expired 3-31-2009
 19.31.6 NMAC, Migratory Game Bird, filed 8-17-2009 - duration expired 3-31-2010
 19.31.6 NMAC, Migratory Game Bird, filed 8-2-2010 - duration expired 3-31-2011
 19.31.6 NMAC, Migratory Game Bird, filed 8-1-2011 - duration expired 3-31-2012
 19.31.6 NMAC, Migratory Game Bird, filed 8-14-2012 - duration expired 3-31-2013
 19.31.6 NMAC, Migratory Game

Bird, filed 8-29-2013 - duration expired 3-31-2014
 19.31.6 NMAC, Migratory Game Bird, filed 8-31-2014 - duration expired 3-31-2015
 19.31.6 NMAC, Migratory Game Bird, filed 9-1-2015 - duration expired 3-31-2016
 19.31.6 NMAC, Migratory Game Bird, filed 6-30-2016 - duration expired 3-31-2017
 19.31.6 NMAC, Migratory Game Bird, filed 7-27-2017 - duration expired 3-31-2018

**GAME AND FISH,
DEPARTMENT OF**

**TITLE 19 NATURAL
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING
PART 16 TURKEY**

19.31.16.1 ISSUING

AGENCY: New Mexico department of game and fish.
 [19.31.16.1 NMAC - Rp, 19.31.16.1 NMAC, 4-1-19]

19.31.16.2 SCOPE:

Sportspersons interested in turkey management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978, and Title 19 NMAC.
 [19.31.16.2 NMAC - Rp, 19.31.16.2 NMAC, 4-1-19]

19.31.16.3 STATUTORY

AUTHORITY: Sections 17-1-14, 17-1-26, 17-3-16.4, and 17-3-16.5 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.
 [19.31.16.3 NMAC - Rp, 19.31.16.3 NMAC, 4-1-19]

19.31.16.4 DURATION:

April 1, 2019 through March 31, 2023.
 [19.31.16.4 NMAC - Rp, 19.31.16.4 NMAC, 4-1-19]

19.31.16.5 EFFECTIVE

DATE: April 1, 2019, unless a later date is cited at the end of a section.
 [19.31.16.5 NMAC - Rp, 19.31.16.5 NMAC, 4-1-19]

19.31.16.6 OBJECTIVE:

Establishing open hunting seasons, rules and procedures governing the distribution and issuance of turkey permits and licenses by the department.
 [19.31.16.6 NMAC - Rp, 19.31.16.6 NMAC, 4-1-19]

19.31.16.7 DEFINITIONS:

A. “Bearded turkey” shall mean a turkey with a visible beard.

B. “Bearded Gould’s turkey” shall mean a turkey with a visible beard of the species *meleagris gallopavo mexicana*.

C. “Department” shall mean the New Mexico department of game and fish.

D. “Director” shall mean the director of the New Mexico department of game and fish.

E. “Entry permit” shall entitle the holder of a valid turkey license to hunt areas otherwise closed to turkey hunting.

F. “Game management unit” or “GMU” shall mean those areas as described in state game commission rule 19.30.4 NMAC, Boundary Descriptions for Game Management Units.

G. “Gould’s turkey permit” as used herein, shall mean a document issued by the department that authorizes the holder to participate in the activity as specified on the permit.

H. “Wildlife management areas” or “WMAs” shall mean those areas as described in rule 19.34.5 NMAC, Wildlife Management Areas.
 [19.31.16.7 NMAC - Rp, 19.31.16.7 NMAC, 4-1-19]

19.31.16.8 ADJUSTMENT OF LICENSES, PERMITS, AND AUTHORIZATIONS: The director, with the verbal concurrence of the chairperson or their designee, may

adjust the number of licenses, permits, or authorizations, for turkey up or down by no more than twenty percent to address significant changes in population levels or habitat availability. This adjustment may be applied to any or all of the entry hunt codes for turkey.

[19.31.16.8 NMAC - Rp, 19.31.16.8 NMAC, 4-1-19]

19.31.16.9 TURKEY HUNTING SEASONS: The 2019-20 through 2022-23 hunting seasons shall be as indicated below, listing the GMUs or areas open, eligibility requirements or restrictions, hunt dates, hunt codes, legal sporting arms, number of permits, and bag limits. All WMAs, except as listed in Subsection A of 19.31.16.9 NMAC, are open to both spring and fall over-the-counter turkey hunting if the GMU where they are located is open to turkey hunting or unless specifically closed in rule or are restricted to entry permit holders as listed in Subsection B of 19.31.16.9 NMAC.

A. Over-the-counter hunts: All over-the-counter turkey licenses shall be valid for any legal sporting arms, except turkey hunting in the Sandia ranger district portion of GMU 14 and Sugarite canyon state park in GMU 57 are restricted to bow and crossbow only. The number of licenses for these hunts shall be unlimited.

(1) Spring seasons:

Open GMUs or areas	hunt dates	bag limit
Statewide except the following GMUs or areas are closed to over-the-counter turkey hunting: GMU: 2A areas east of NM 550 and north of NM 173, 2B areas in the Carson national forest, 2C areas in the Carson national forest, 6B, 8, 19, 25, 26, 27, 28, 30, 31 Bernardo WMA, Bill Evans WMA, Double E WMA, Jackson lake WMA, La Joya WMA, Lake Roberts WMA, Marquez WMA, Prairie Chicken WMAs, Red Rock WMA, River ranch WMA, Valle Vidal, W.S. Huey WMA	4/15-5/10	2 turkeys with visible beards
Statewide except as listed above, youth only	4/12-14/2019 4/10-12/2020 4/9-11/2021 4/8-10/2022	2 turkeys with visible beards

(2) Fall seasons:

Open GMUs or areas	hunt dates	bag limit
Statewide except the following GMUs or areas are closed to over the counter turkey hunting: GMU: 2A areas east of NM 550 and north of NM 173, 2B areas in the Carson national forest, 2C areas in the Carson national forest, 6B, 8, 14, 18, 19, 20, 25, 26, 27, 28, 30, 31, 33, 38, 43, 49, 50, 53 Bernardo WMA, Bill Evans WMA, Double E WMA, Edward Sargent WMA, Jackson lake WMA, La Joya WMA, Lake Roberts WMA, Marquez WMA, Prairie Chicken WMAs, Red Rock WMA, Rio Chama WMA, River ranch WMA, Sugarite canyon state park, Valle Vidal, W.A. Humphries WMA, W.S. Huey WMA	bow only: 9/1-30 any legal sporting arms: 11/1-30	any 1 turkey

B. Entry permit hunts: All entry permits shall be valid for any legal sporting arms except turkey hunting in the Sandia ranger district portion of GMU 8. An entry permit authorizes the holder to hunt in the area, for the bag limit, and for the season dates listed on the permit. In addition, holders of a turkey entry permit may hunt in any open over-the-counter area during the spring season for a second turkey (if applicable) or if unsuccessful in their entry hunt area. In no circumstance may any turkey hunter take or attempt to take more than 2 bearded turkeys during the spring season, except the holder of a Gould's turkey enhancement permit as described in 19.31.16.11 NMAC. Holders of an entry hunt permit must also purchase a turkey hunting license prior to hunting. The maximum number of permits is listed below.

Open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	permits	bag limit
2B (Carson national forest) 2C (Carson national forest)	4/15-5/10	4/15-5/10	4/15-5/10	4/15-5/10	TUR-1-100	115	1 turkey with visible beard

2B (Carson national forest) 2C (Carson national forest), youth only	4/15-5/10	4/15-5/10	4/15-5/10	4/15-5/10	TUR-1-101	50	1 turkey with visible beard
2A (areas east of NM 550 and north of NM 173), youth only	4/15-5/10	4/15-5/10	4/15-5/10	4/15-5/10	TUR-1-102	5	1 turkey with visible beard
6B the Valles Caldera national preserve	4/15-4/30	4/15-4/30	4/15-4/30	4/15-4/30	TUR-1-103	20	1 turkey with visible beard
8 (bow and crossbow only in Sandia ranger district)	4/15-5/10	4/15-5/10	4/15-5/10	4/15-5/10	TUR-1-104	15	2 turkeys with visible beard
9 Marquez WMA	4/15-5/10	4/15-5/10	4/15-5/10	4/15-5/10	TUR-1-105	5	2 turkeys with visible beard
30 Washington Ranch (private land), youth only	TBD	TBD	TBD	TBD	TUR-1-106	up to 10	1 turkey with visible beard
33 W.S. Huey WMA, youth only	4/12-4/14	4/10-4/12	4/9-4/11	4/8-4/10	TUR-1-107	up to 4	1 turkey with visible beard
33 W.S. Huey WMA, youth only	4/19-4/21	4/17-4/19	4/16-4/18	4/15-4/17	TUR-1-108	up to 4	1 turkey with visible beard
55 Valle Vidal and Greenwood areas	4/15-4/30	4/15-4/30	4/15-4/30	4/15-4/30	TUR-1-109	20	1 turkey with visible beard

[19.31.16.9 NMAC - Rp, 19.31.16.12 NMAC, 4-1-19]

19.31.16.10 TURKEY POPULATION MANAGEMENT HUNTS:

A. The director or their designee may authorize population management hunts for turkey when justified in writing by department personnel.

B. The director or their designee shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter's names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner-identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.16.10 NMAC - Rp, 19.31.16.13 NMAC, 4-1-19]

19.31.16.11 GOULD'S TURKEY ENHANCEMENT PROGRAM:

A. The director of the department shall collect all proceeds generated through the auction or lottery or both, of not more than two special Gould's turkey enhancement permits annually. These monies shall be deposited into the game protection fund and made available for expenditure by the department to be used exclusively for activities, projects, and programs aimed at the restoration and management of Gould's turkeys and Gould's turkey habitat.

B. Requirements for issuance, sale and use of Gould's turkey enhancement permits:

(1) **Issuance:** The director of the department may issue up to two Gould's turkey enhancement permits annually. Prior to permit issuance each year, the director must document that the prospective harvest of up to two bearded Gould's turkeys will not jeopardize the prospects for survival and recruitment of Gould's turkeys in New Mexico or conflict with the Wildlife Conservation Act, 17-2-37 NMSA 1978.

(2) **Sale:**

(a) The auction or lottery or both may be conducted by an incorporated non-profit

organization dedicated to the conservation of wildlife, in cooperation with and overseen by the department.

(b)

Selection of an organization to administer the auction or lottery or both of the Gould's turkey enhancement permits shall be pursuant to procurement code regulations described in 1.4.1.31 NMAC.

(3) Use:

(a)

The successful purchaser(s) will be allotted an authorization for a Gould's turkey enhancement permit, which may be transferred through sale, barter, donation, or gift to other individuals qualified to purchase a license and hunt. Once an authorization is converted to a permit, the permit will be non-transferable.

(b)

Individuals hunting pursuant to a Gould's turkey enhancement permit must purchase and have in their possession a valid turkey hunting license and any other stamps, tags, or permits required by rule.

(c)

Unless their hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to bid on and purchase a Gould's turkey enhancement permit.

(d)

Individuals holding a Gould's turkey enhancement permit shall not be prohibited from hunting other species of turkeys in New Mexico as allowed in 19.31.16 NMAC.

(e)

The bag limit for each permit shall be one bearded Gould's turkey.

(f)

The season dates for each permit shall be no more than 30 consecutive days between April 1 and May 31 as specified by the permit each license year.

(g)

The harvest of one bearded Gould's turkey shall not count against the license holder's spring turkey bag limit.

(h)

The hunt area for each permit shall be any legally accessible public lands in GMU 27 where hunting is allowed and private land with written permission.

(i)

All manner and method restrictions and requirements set forth in 19.31.10 NMAC shall apply to individuals hunting turkey pursuant to Gould's turkey enhancement permits. [19.31.16.11 NMAC -Rp , 19.31.16.14 NMAC, 4-1-19]

HISTORY OF 19.31.16 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Regulation No. 482, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 5/31/67; Regulation No. 487, Establishing 1967 Seasons On Javelina And Barbary Sheep, filed 12/15/67; Regulation No. 489, Establishing Turkey Seasons For The Spring Of 1968, filed 3/1/68; Regulation No. 491, Establishing Big Game Seasons For 1968 For Jicarilla Reservation, filed 3/1/68; Regulation No. 492, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 6/6/68; Regulation No. 495, Establishing A Season On Bighorn Sheep, filed 10/2/68; Regulation No. 496, Establishing An Elk Season In The Tres Piedras Area, Elk Area P-6, filed 12/11/68; Regulation No. 502, Establishing Turkey Seasons For The Spring Of 1969, filed 3/5/69; Regulation No. 503, Establishing 1969 Deer Seasons For Bowhunting Only And Big Game Seasons For The Jicarilla Indian Reservation, filed 3/5/69; Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, And Barbary Sheep, filed 6/4/69; Regulation No. 507, Establishing A Season On Bighorn Sheep, filed

8/26/69;

Regulation No. 512, Establishing Turkey Season For The Spring Of 1970, filed 2/20/70;

Regulation No. 513, Establishing Deer Season For Bowhunting Only In Sandia State Game Refuge, filed 2/20/70;

Regulation No. 514, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Barbary Sheep And Bighorn Sheep, filed 6/9/70;

Regulation No 520, Establishing Turkey Seasons For The Spring Of 1971, filed 3/9/71;

Regulation No. 522, Establishing 1971 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/9/71;

Regulation No. 523, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/9/71;

Regulation No. 531, Establishing A Season On Javelina, filed 12/17/71; Regulation No. 532, Establishing Turkey Seasons For The Spring Of 1972, filed 3/20/72;

Regulation No. 534, Establishing 1972 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/20/72; Regulation No. 536, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/26/72;

Regulation No. 542, Establishing A Season On Javelina, filed 12/1/72; Regulation No. 545, Establishing Turkey Seasons For The Spring Of 1973, filed 2/26/73;

Regulation No. 546, Establishing 1973 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 2/26/73;

Regulation No. 547, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, And Javelina, filed 5/31/73;

Regulation No. 554, Establishing Special Turkey Seasons For The Spring of 1974, filed 3/4/74;
 Regulation No. 556, Establishing 1974 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/14/74;
 Regulation No. 558, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex, filed 5/29/74;
 Regulation No. 565, Establishing Special Turkey Seasons For The Spring Of 1975, filed 3/24/75;
 Regulation No. 567, Establishing 1975 Seasons On Deer, Bear, And Turkey On The Jicarilla Apache And Navajo Indian Reservations And On Elk On The Jicarilla Apache Indian Reservation, filed 3/24/75;
 Regulation No. 568, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 6/25/75;
 Regulation No. 573, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/76;
 Regulation No. 583, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/11/77;
 Regulation No. 590, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/15/78;
 Regulation No. 596, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/79;
 Regulation No. 603, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1980 through March 31, 1981, filed

2/22/80;
 Regulation No. 609, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1981 through March 31, 1982, filed 3/17/81;
 Regulation No. 614, Establishing Open Seasons On Deer, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1982 through March 31, 1983, filed 3/10/82;
 Regulation No. 622, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1983 through March 31, 1984, filed 3/9/83;
 Regulation No. 628, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1984 through March 31, 1985, filed 4/2/84;
 Regulation No. 634, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1985 Through March 31, 1986, filed 4/18/85;
 Regulation No. 640, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1986 through March 31, 1987, filed 3/25/86;
 Regulation No. 645, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1987 through March 31, 1988, filed 2/12/87;
 Regulation No. 653, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1988 through March 31, 1989, filed 12/18/87;
 Regulation No. 663, Establishing

Opening Spring Turkey For The Period April 1, 1989 through March 31, 1990, filed 3/28/89;
 Regulation No. 664, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1989 through March 31, 1990, filed 3/20/89;
 Regulation No. 674, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1990 through March 31, 1991, filed 11/21/89;
 Regulation No. 683, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1991 through March 31, 1992, filed 2/8/91;
 Regulation No. 689, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1992 through March 31, 1993, filed 3/4/92;
 Regulation No. 700, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1993 through March 31, 1995, filed 3/11/93.

History of Repealed Material:

19.31.8 NMAC, Big Game, filed 3-1-2001 - duration expired 3-31-2003.
 19.31.8 NMAC, Big Game and Turkey, filed 3-3-2003 - duration expired 3-31-2005.
 19.31.8 NMAC, Big Game and Turkey, filed 12-15-2004 - duration expired 3-31-2007.
 19.31.16 NMAC, Turkey, filed 12-1-2006 - duration expired 3-31-2009.
 19.31.16 NMAC, Turkey, filed 2-26-2009 - duration expired 3-31-2011.
 19.31.16 NMAC, Turkey, filed 9-15-2010 - duration expired 3-31-2015.
 19.31.16 NMAC, Turkey, filed 3-17-2015, repealed 3-31-2016.
 19.31.16 NMAC, Turkey, filed 2-29-2016, duration expired 3-31-2019.

HIGHER EDUCATION DEPARTMENT

The New Mexico Higher Education Department approved and adopted on 07/12/2018, to repeal 5.6.2 NMAC - Enrollment Reporting, filed 12/31/1998 and replace it with 5.6.2 NMAC - Data Reporting, effective 07/24/2018.

The New Mexico Higher Education Department approved and adopted, on 07/12/2018, to repeal its rule 5.6.3 NMAC - Variable Scheduling (Filed 12/31/1998), effective 07/24/2018.

The New Mexico Higher Education Department approved and adopted, on 07/12/2018, to repeal its rule 5.6.4 NMAC - Enrollment Verification (Filed 12/31/1998), effective 07/24/2018.

HIGHER EDUCATION DEPARTMENT

**TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 6 POST-SECONDARY ENROLLMENT AND DATA REPORTING
PART 2 DATA REPORTING**

5.6.2.1 ISSUING AGENCY: State of New Mexico Higher Education Department [5.6.2.1 NMAC - Rp, 5.6.2.1 NMAC, 7/24/2018]

5.6.2.2 SCOPE: All public post-secondary educational institutions operating within and receiving financial support from the state of New Mexico. [5.6.2.2 NMAC- Rp, 5.6.2.2 NMAC, 7/24/2018]

5.6.2.3 STATUTORY AUTHORITY: Section 9-25-8 NMSA 1978, Section 21-2-5 NMSA 1978 and Section 21-2-7 NMSA 1978. [5.6.2.3 NMAC- Rp, 5.6.2.3 NMAC, 7/24/2018]

5.6.2.4 DURATION: Permanent. [5.6.2.4 NMAC- Rp, 5.6.2.4 NMAC, 7/24/2018]

5.6.2.5 EFFECTIVE DATE: July, 24 2018, unless a later date is cited at the end of a section. [5.6.2.5 NMAC- Rp, 5.6.2.5 NMAC, 7/24/2018]

5.6.2.6 OBJECTIVE: To establish data reporting requirements and procedures for public post-secondary institutions operating within and receiving financial support from the state of New Mexico report data to the New Mexico higher education department. [5.6.2.6 NMAC- Rp, 5.6.2.6 NMAC, 7/24/2018]

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

B. "Campus" means any physical location of the institution.

C. "Institution" means a public post-secondary institution operating within and receiving financial support from the state of New Mexico. [5.6.2.7 NMAC- Rp, 5.6.2.7 NMAC, 7/24/2018]

5.6.2.8 GENERAL REQUIREMENTS:
A. The department shall maintain the electronic data and editing reporting (eDEAR) system to collect data from institutions. The department shall maintain a reporting manual to assist institutions in utilizing the eDEAR reporting system. The eDEAR reporting manual shall be updated and maintained by the department and include data reporting requirements and eDEAR user guidance. The department shall make the most current version of the eDEAR reporting manual available to institutions on the department website. Any changes to the eDEAR reporting manual shall be made available to institutions at least 30 days prior to reporting deadlines.

B. Institutions shall comply with all data reporting requirements set by the department in the eDEAR reporting manual. Data submitted by institutions may be used by the department to develop reports and to conduct statewide planning.

C. Any tribal college or tribal university that has executed a memorandum of understanding with the department expressing its intent to implement the common course numbering system pursuant to 5.55.5 NMAC, the statewide general education curriculum pursuant to 5.55.6 NMAC, or the statewide meta-majors and transfer modules pursuant to 5.55.7 NMAC, shall be considered an institution as defined in 5.6.2.7 NMAC. [5.6.2.8 NMAC- Rp, 5.6.2.8 NMAC, 7/24/2018]

5.6.2.9 DATA REPORTING SUBMISSION SCHEDULE: The department shall set and publish reporting deadlines for data submission within the eDEAR reporting manual. An institution shall report required data to the department pursuant to the reporting deadlines set and published by the department. [5.6.2.9 NMAC- Rp, 5.6.2.9 NMAC, 7/24/2018]

5.6.2.10 DATA REPORTING VERIFICATION:
A. An on-site data verification visit may be scheduled at any campus location of an institution. During its on-site data verification visit, the department may seek to verify any data reported by the institution and determine the institution's compliance with data reporting requirements set by the department in the eDEAR reporting Manual.

B. The on-site data verification campus visit will be conducted to complete the following:
(1) clarify department data requirements, definitions, and procedures with campus personnel;
(2) evaluate campus compliance with department data submission requirements and

policies;

(3) identify data reporting problem areas for the campus through evaluation of campus compliance with department data requirements; and

(4) solicit institutional assistance in refining department data elements, submission procedures, and data use.

C. Prior to an on-site data verification campus visit, the department shall issue notice to the institution of its intent to conduct a visit no less than 60 days prior to the visit. The department shall coordinate the visit with the institution and provide data to be used by the department during the verification process. The department shall conduct meetings with institutional administration at the beginning and end of the verification visit to discuss objectives, procedures, time frame and follow-up. A preliminary and final report of the visit shall be shared with the institution for review and comment. In its report, the department shall offer suggested remedies to cure any deficiencies discovered through the verification process.

[5.6.2.10 NMAC- N, 7/24/2018]

HISTORY OF 5.6.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: BEF Rule 610, Enrollment Reporting, 2/27/85.

5 NMAC 6.2, filed 12/31/1998 was renumbered 5.6.2 NMAC, effective 7/31/05.

5.6.2 NMAC - Enrollment Reporting, filed 12/31/1998 was repealed and replaced by 5.6.2 NMAC - Data Reporting, effective 7/24/2018.

5.6.2 NMAC - Data Reporting was derived from portions of repealed rules 5.6.2, 5.6.3 & 5.6.4 NMAC, effective 7/24/2018.

History of Repealed Material:

5.6.2 NMAC - Enrollment Reporting, filed 12/31/1998 was repealed and replaced by 5.6.2 NMAC - Data Reporting, effective 7/24/2018.

HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.6 NMAC, Sections 2, 7, 9, 10, 11, and 12 effective 7/24/2018.

5.7.6.2 SCOPE:

Provisions of 5.7.6 NMAC apply to New Mexico residents that apply to and are selected to participate in the fire fighter and peace officer survivors scholarship program [described in this rule, the state of New Mexico higher education department, and public post-secondary institutions in New Mexico].

[5.7.6.2 NMAC - N, 08/29/2014; A, 7/24/2018]

5.7.6.7 DEFINITIONS:

A. **“Academic year”** means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.

B. **“Cost of attendance”** means the price of attendance, the publication of which is required by federal law, and includes tuition and fees, books and supplies, room and board, transportation and any additional costs for a program in which a student is enrolled.

~~[B:]~~ C. **“Department”** means the New Mexico higher education department.

~~[C:]~~ D. **“Educational institution”** or **“institution”** means any [New Mexico] public post-secondary institution in the United States.

~~[D:]~~ **“Eligible course for reimbursement”** means a course for credit included in a student’s official transcript and creditable toward a certificate or degree-granting program.]

E. **“Fire Fighter”** means any member of a fire department that is part of or administered by the state or any political subdivision of the state.

F. **“Line of duty”** means any action which a member is obligated or authorized by law, rule, regulation, written condition of employment or authorized volunteer

membership to perform.

~~[G:]~~ **“Master’s degree course”** means a class for students who hold a bachelor’s degree who have been admitted to a graduate school for the purpose of pursuing a master’s degree and has not yet completed a master’s degree.]

~~[H:]~~ G. **“Member”** means a full-time or part-time paid employee or a paid or unpaid volunteer who is authorized by the police department, sheriff’s department or fire department to be involved in and perform the duties and responsibilities of the department.

~~[I:]~~ H. **“Peace officer”** means any member of a police or sheriff’s department that is part of or administered by the state or any political subdivisions of the state and officers in the department of corrections.

~~[J:]~~ I. **“Political subdivision”** means any entity of the state or local government, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation or other special districts; and school districts.

~~[K:]~~ J. **“Recipient”** means a student awarded the fire fighter peace officer survivors scholarship.

K. **“Research institution”** means the university of New Mexico, New Mexico state university or New Mexico institute of mining and technology.

L. **“Satisfactory academic progress”** means maintaining the required academic progress toward degree completion as determined by the institution.

M. **“Survivor”** means a spouse, adopted child, or natural child of a fire fighter or peace officer who was killed in the line of duty. The survivor, if a child, must have been 21 years of age or under at the time of the qualifying member’s death.

N. **“Tuition”** is the basic educational charge that all

students are required to pay as a condition of admission and attendance for academic services or the course fee charged for certificate programs. The actual rate per semester or year is set by each institution.

~~Ø.~~ **“Undergraduate post-secondary student”** means a matriculated student who has been admitted to the college and has not yet completed a bachelor’s degree. [5.7.6.7 NMAC - N, 08/29/2014; A, 7/24/2018]

5.7.6.9 DURATION OF SCHOLARSHIP: The scholarship shall continue for such time as the recipient maintains satisfactory academic progress at the educational institution, but in no event shall any recipient receive the scholarship for more than ~~[five]~~ six academic years. [5.7.6.9 NMAC - N, 08/29/2014; A, 7/24/2018]

5.7.6.10 AMOUNT OF SCHOLARSHIP: The amount of the scholarship awarded to a recipient shall be [equal to the amount of tuition charged by the educational institution attended by the recipient] based on the location of the institution the recipient chooses to attend:

A. New Mexico institutions: If the institution is in New Mexico, the amount of the scholarship shall be equal to the amount of tuition, room and board charged by the institution attended.

B. Institution outside of New Mexico: If the institution is not in New Mexico, the amount of the scholarship for tuition, room and board shall not exceed the average cost of attendance at New Mexico research institutions.

[5.7.6.10 NMAC - N, 08/29/2014; A, 7/24/2018]

5.7.6.11 ADMINISTRATION OF FIRE FIGHTER AND PEACE OFFICER SURVIVORS SCHOLARSHIP:

A. The department shall authorize payments to ~~[public]~~ educational institutions, for recipients, upon receipt of documentation required by the department.

B. Awards shall be limited for reimbursements to educational institutions for ~~[tuition-costs]~~ the actual incurred cost of tuition, room and board. For recipients attending an institution not in New Mexico, the scholarship award shall not exceed the average cost of attendance of New Mexico research institutions. No cash shall be released by an educational institution to a recipient except to reimburse actual payments.

C. Money shall be allocated in the order that payment requests are received and approved.

D. To request payment institutions shall invoice the department on a semester basis; institutions shall provide supporting documents for each recipient including class schedule, ~~[degree/certificate]~~ degree or certificate program catalog requirements and any additional documentation the department may require to process the request.

E. Reimbursement payments may also be authorized by administrative rulings under specific conditions. [5.7.6.11 NMAC - N, 08/29/2014; A, 7/24/2018]

5.7.6.12 TERMINATION OF SCHOLARSHIP: A scholarship is terminated upon the occurrence of one or more of the following:

A. Withdrawal by the recipient from the institution to which the recipient was granted the scholarship to attend. In the event the recipient seeks to transfer the scholarship to another institution the recipient must notify and obtain prior approval from the department.

~~[B.]~~ Failure to remain enrolled in a satisfactory academic activity.]

~~[C.]~~ **B.** Failure to achieve satisfactory academic progress by the recipient as determined by the educational institution.

~~[D.]~~ **C.** Substantial noncompliance by the scholarship recipient with the fire fighters and peace officer survivors scholarship act or the rules, regulations or procedures

promulgated by the state of New Mexico higher education department. [5.7.6.12 NMAC - N, 08/29/2014; A, 7/24/2018]

HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.20 NMAC, Sections 7, 10 and 11, effective 7/24/2018.

5.7.20.7 DEFINITIONS:
A. “Academic year”

means any consecutive period of two semesters (or three semesters for accelerated programs), three quarters or other comparable units commencing with the fall term each year.

B. “Accelerated program” means one in which a summer semester is a program requirement and not a student choice; a cohort that requires sequence of courses taken in summer semester.

C. “Community college” means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978, respectively.

D. “Comprehensive institution” means eastern New Mexico university, New Mexico Highlands university, northern New Mexico college or western New Mexico university.

E. “Consortium” means a written agreement between a home institution and one or more host institutions for consideration of combined enrollment for eligibility:

(1) home institution is the institution where the student is enrolled in a degree or certificate seeking program and is receiving lottery scholarship funds;

(2) host institution is the secondary institution where the student is taking part of their program requirements.

F. “Department” means the New Mexico higher

education department (NMHED).

G. “Full-time” means 15 or more credit hours completed each program semester of the regular academic year at a research institution or comprehensive institution; or 12 or more credit hours completed for each program semester at community colleges; or through a consortium agreement between the home and host institutions. For students enrolled through a consortium agreement the minimum credit hour eligibility requirement shall be based on the student’s home institution. Qualified students in their graduating semester are only required to take the number of credit hours required to graduate.

H. “GPA” means grade point average.

I. “Legislative lottery scholarship” means a scholarship awarded from proceeds of the New Mexico lottery tuition fund, to defray all or part of the cost of tuition.

J. “Non-enrollment” means a student is not enrolled in a public post-secondary educational institution.

K. “Probation” means a period of time that a student fails to meet continuing eligibility for exceptional mitigating circumstances as determined by the lead financial aid officer at the institution; as described in Subsection C of 5.7.20.8 NMAC.

L. “Program semesters” means those semesters for which a qualified student may receive a tuition scholarship and excludes the first semester of attendance at a public post-secondary educational institution.

M. “Public post-secondary educational institution” means a research or comprehensive institution, as defined in Article XII, Section 11 of the New Mexico constitution, and branch community colleges or community college or technical and vocational institute as defined by Section 21-13, 14 and 16 NMSA 1978.

N. “Research institution” means New Mexico institute of mining and technology, New Mexico state university and the university of New Mexico.

O. “Qualified student” means a full-time student who completed high school at a public or accredited private New Mexico high school, graduated from a public or accredited private New Mexico high school or who received a high school equivalency credential while maintaining residency in New Mexico and who either:

(1) within 16 months of graduation or receipt of a high school equivalency credential, was accepted for entrance to and attended a public post-secondary educational institution without having previously enrolled at a non-qualifying postsecondary institution;

or
(2) within four months of graduation or receipt of a high school equivalency credential, began service in the United States armed forces and within 16 months of completion of honorable service or medical discharge from the service, attended a public post-secondary educational institution without having previously enrolled at a non-qualifying postsecondary institution;

and
(3) successfully completed the first semester at a public post-secondary educational institution with a grade point average of 2.5 or higher on a 4.0 scale during the first semester of full time enrollment.

[**R**] **P. “Summer semester”** means a semester equal to fall and spring semester in duration and intensity that is required as part of an accelerated program.

[**S**] **Q. “Tuition scholarship”** means the scholarship that provides tuition assistance per semester for qualified students. [5.7.20.7 NMAC - Rp, 5.7.20.7 NMAC, 08/15/2014; A/E, 8/15/2014; A, 11/15/2016; A, 10/31/2017; A, 7/24/2018]

5.7.20.10 AMOUNT OF SCHOLARSHIP:

A. To the extent that funds are made available from the fund, the board of regents or governing bodies of public

postsecondary educational institutions shall award tuition scholarship in department approved amounts to qualified students.

B. The method the department will use for calculating the tuition scholarship is as follows:

(1) estimate the total amount available in the lottery tuition fund, based on past lottery fund transfers, current year balances, and additional funds made available through legislation;

(2) estimate the number of lottery scholarship recipients for each institution, based on department endorsed institutional projections;

(3) calculate the [~~un-weighted average~~] tuition scholarship for each sector (research, comprehensive, and community college) in accordance with [~~2016 Bill Text NM S.B. 280~~] 2018 Bill Text NM S.B. 140;

(4) calculate the total amount needed to pay full [~~average~~] tuition to all estimated recipients;

(5) compute [~~the uniform percentage of the sector average tuition rates that can be paid that keeps the fund solvent and ensures that the fund will not be overspent~~] an award for each scholarship recipient distributed in amounts as follows:

(a) one thousand five hundred dollars (\$1,500) per scholarship per program semester for a student enrolled at a research institution;

(b) one thousand twenty dollars (\$1,020) per scholarship per program semester for a student enrolled at a comprehensive institution; and

(c) three hundred eighty dollars (\$380) per scholarship per program semester for a student enrolled at a community college;

(6) [~~determine the maximum award per recipient for each institution (uniform percentage-times average sector tuition for the sector of each institution)]; If the total amount available pursuant to~~

Paragraph (3) of Subsection B of 5.7.20.10 NMAC is less than the amount calculated in Paragraph (5) of Subsection B of 5.7.20.10 NMAC, the department shall decrease the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Paragraph (5) of Subsection B of 5.7.20.10 NMAC. If the total amount available pursuant to Paragraph (3) of Subsection B of 5.7.20.10 NMAC is more than the amount calculated in Paragraph (5) of Subsection B of 5.7.20.10 NMAC, the department shall increase the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Paragraph (5) of Subsection B of 5.7.20.10 NMAC.

(7) notify institutions.

C. In no case shall a student receive scholarship awards exceeding the total amount of tuition charged.

D. Qualified students in their graduating semester shall receive a tuition scholarship proportional to the number of credit hours required to graduate.

[5.7.20.10 NMAC - Rp, 5.7.20.10 NMAC, 08/15/2014; A, 11/15/2016; A, 10/31/2017; A, 7/24/2018]

**5.7.20.11
ADMINISTRATION OF THE
LEGISLATIVE LOTTERY
SCHOLARSHIP:**

A. Eligible post-secondary educational institutions shall:

(1) notify students of their possible eligibility, during their first regular semester of enrollment including transfer students who had the legislative lottery scholarship at previous institutions;

(2) designate their institution's lead financial aid officer to be responsible for determining initial and continuing student eligibility for the legislative lottery scholarship under the terms of these rules and regulations;

(3) maintain a listing of each participating student to

include, but not be limited to:

(a) social security number as appropriate;

(b) cumulative GPA and completed enrollment hours in prior semesters;

(c) proof of initial and continuing enrollment;

(d) award semester; and

(e) other data fields deemed important by the department;

(4) draw-down files should be submitted to the department for eligible students as defined in 5.7.20.10 NMAC per semester; all fiscal year draw-downs shall be for eligible students enrolled during the same fiscal year;

(5) for students that satisfied the first semester eligibility requirements and seek continuing eligibility consideration, use professional judgment to determine that exceptional mitigating circumstances beyond the students control, for which documentation exists in the student's file; the institutions shall defer to their institutional satisfactory academic progress policy when considering circumstances which include, but are not limited to, consideration for falling below the cumulative GPA requirement or successfully maintain full time enrollment as defined in Subsection [E] G of 5.7.20.7 NMAC;

(6) provide to the department by April 15 each year the projected enrollment and tuition rates for the following academic year for their appropriate institution as follows: comprehensive, research institution in their second through eighth program semester including qualified students in their fifth through eighth program semesters who transferred from a community college; projected enrollment at each community college at each community college in their second through fourth program semesters;

(7) publish the probation policy as defined in Subsection C of 5.7.20.8 NMAC;

(8) encourage

consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to facilitate the enrollment of students and to facilitate the student's participation in this program;

(9) ensure that all available state scholarships including merit based three percent scholarship and New Mexico scholars are awarded before granting legislative lottery scholarships; the intent of this provision is that tuition costs shall be paid first for those students eligible for merit-based aid packages funded by three percent scholarships; in those instances when tuition is not fully covered by the merit-based aid package, said student is eligible for the tuition cost differential to be funded by the legislative lottery scholarship program; nothing in this section requires a public postsecondary educational institution to award a scholarship inconsistent with the criteria established or such scholarship; refer to Subsection G of 5.7.20.9 NMAC for additional provisions;

B. The department shall:

(1) determine ~~[a uniform percentage of the average of in-state tuition costs by sector by which to calculate tuition scholarships]~~ the scholarship award pursuant to the provisions of 5.7.20.10 NMAC; all eligible institutions will be notified prior to June 1 annually;

(2) conduct audits to ascertain compliance with rules and regulations, if, during the audit process, evidence indicates that a student should not have received a legislative lottery scholarship, the department will provide guidance to the institutions for appropriate action;

(3) make available to the legislative finance committee and department of finance and administration, by November 1, the following information:

(a) the status of the fund;

(b) tuition scholarship program participation data aggregated for

each public postsecondary education institution to show:

(i) the number of qualified students who received tuition scholarships and in the prior 12 month period;

(ii) the total number of qualified students enrolled in the prior 12-month period;

(iii) the amount of tuition scholarships funded by semester and the amount of tuition costs that were not offset by the tuition scholarship by semester; and

(iv) the number of qualified students who graduated with a degree and, for each qualified student, the number of consecutive semesters and nonconsecutive semesters attended prior to graduation.
[5.7.20.11 NMAC - Rp, 5.7.20.11 NMAC, 08/15/2014; A/E, 8/15/2014; A, 11/15/2016; A, 10/31/2017; A, 7/24/2018]

HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.31 NMAC, Sections 7 and 9, effective 7/24/2018.

5.7.31.7 DEFINITIONS:

A. "Department" means the New Mexico higher education department.

B. "Committee" means the public service law advisory committee.

C. "Legal education" means education at an American bar association accredited law school and any bar review preparation courses for the state bar examination.

D. "Loan" means money allocated to defray the costs incidental to a legal education under a contract between the federal government or a commercial lender and a law school student, requiring either repayment of principal and interest or repayment in services.

E. "Participating attorney" means an attorney who receives a loan repayment award

from the department pursuant to the provisions of the public service law loan repayment program.

F. "Public service employment" means employment with:

(1) an organization that is exempt from taxation pursuant to Section 501 (c) (3) of Title 26 of the United States Code and that provides for the care and maintenance of indigent persons in New Mexico through civil legal services;

(2) the public defender department; or

(3) a New Mexico district attorney's office.
[5.7.31.7 NMAC - N, 12/31/2007; A, 7/24/2018]

5.7.31.9 LOAN REPAYMENT PROGRAM ELIGIBILITY AND AWARD CRITERIA:

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

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

C. An applicant who intends to practice as an attorney in a public service employment position that earns more than ~~[fifty-five]~~ seventy-five thousand dollars [~~(\$55,000)~~ (\$75,000) per year is not eligible for participation in the public service law loan repayment program.

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

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

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

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

E. Award criteria shall provide that:

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

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

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

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

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

(2) an applicant's employment as an attorney in public service employment prior to participation in the public service law loan repayment program shall not count as time spent toward the minimum three-year period of service requirement pursuant to the contract between the participating attorney and the department acting on behalf of the state;

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

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

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

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

F. The following legal education debts are not eligible for repayment pursuant to the [Public-Service Law Repayment Program] public service law loan repayment program:

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

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

(3) personal loans from relatives or friends; and

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

(5) an award determination may be appealed to the secretary of higher education. [5.7.31.9 NMAC - N, 12/31/2007; A, 5/30/2008; A, 10/31/2013; A, 7/24/2018]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.610 NMAC, Sections, 3, 5, 6, 8, 9 and 11 thru 15, effective 07/24/2018.

8.139.610.3 STATUTORY AUTHORITY:

The [food-stamp-program] supplemental nutrition assistance program (SNAP) is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering [the food-stamp-program] SNAP is contained in Chapter 27 NMSA, 1978. Administration of the human services department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8,

NMSA 1978 (Repl. 1983). [02/01/95; 8.139.610.3 NMAC - Rn, 8 NMAC 3.FSP.000.3, 05/15/2001; A, 07/24/2018]

8.139.610.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.

[02/01/95; 8.139.610.5 NMAC - Rn, 8 NMAC 3.FSP.000.5, 05/15/2001; A, 07/24/2018]

8.139.610.6 OBJECTIVE: Issuance of the revised [food-stamp-program] SNAP policy manual is intended to be used in administration of the [food-stamp-program] SNAP in New Mexico. This revision incorporated the latest federal policy changes in [the food-stamp-program] SNAP not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the human services department.

[02/01/95; 8.139.610.6 NMAC - Rn, 8 NMAC 3.FSP.000.6, 05/15/2001; A, 07/24/2018]

8.139.610.8 BENEFIT ISSUANCE SYSTEM

A. Electronic benefit transfer (EBT): SNAP benefits are issued through a direct deposit into an EBT account. The benefits are maintained in a central database and accessed by the household through an individual debit card issued to the household.

B. Initial issuance of EBT card: The EBT card is issued to the designated payee of the eligible household or to the designated authorized representative.

(1) The EBT card is mailed to the head

of household or the designated authorized representative on the first working day after the application is registered. The applicant or recipient shall receive training on the use of the EBT card prior to activation of the EBT card.

(2) The EBT card shall be issued to the payee for an eligible household through the most effective means identified by HSD which may include issuance at the county office or by mail.

(3) The applicant or recipient must verify his or her identity.

(4) The payee for the eligible household may select the four-digit personal identification number that will allow access to the household's SNAP benefits.

C. Replacement of the EBT card: The recipient or designated authorized representative shall be instructed on the procedure for replacement of an EBT card that has been lost, stolen or destroyed.

(1) The recipient or designated authorized representative may report a lost, stolen or destroyed EBT card through the HSD EBT contractor customer service help desk, HSD EBT customer service help desk or [the their-easeworker] any ISD field office.

(2) The lost, stolen, or destroyed EBT card shall be deactivated prior to a replacement card being issued to the household.

(3) [HSD- shall issue a replacement EBT card within two work-days following the notice by the household to HSD-] ISD shall make replacement EBT cards available for client to pick up or place the card in the mail within two business days following notice by the household to ISD that the card has been lost, stolen or damaged.

(4) ISD may impose a replacement fee by reducing the monthly allotment of the household receiving the replacement card, however, the fee may not exceed the cost to replace the card.

D. Inactive EBT accounts: EBT accounts which have not been accessed by the recipient

in the last 90 days are considered a stale account. HSD may store stale benefits offline after notification to the household of this action.

(1) The notification to the household shall include the reason for the proposed action and the necessary steps required by the recipient to reactive the account.

(2) The recipient may request reinstatement of their EBT account anytime within 364 days after the date of the last benefit account activity.

E. Excessive replacement cards: The HSD office of inspector general (HSD OIG) will generate a warning letter to SNAP recipients that have replaced their EBT card five or more times in a 12 month period. The letter is a notice of warning and will explain that as a result of the recipient's high number of replacement EBT cards, their EBT SNAP transactions will be closely monitored. The letter will become part of the recipient's case record. The letter will:

(1) be written in clear and simple language;

(2) meet the language requirements described at 7 CFR 272.4(b);

(3) specify the number of cards requested and over what period of time;

(4) explain that the next request, or the current request if the threshold has been exceeded, requires contact with ISD before another card is issued;

(5) provide all applicable information on how contact is to be made in order for the client to comply, such as whom to contact, a telephone number and address; and

(6) include a statement that explains what is considered a misuse or fraudulent use of benefits and the possibility of referral to the fraud investigation unit for suspicious activity.

[E.] E. EBT benefit expungement: HSD may expunge benefits that have not been accessed by the household after a period of 365

days. HSD must attempt to notify the household prior to expungement. Expunged benefits are no longer available to the household. Requests for reactivation must be received prior to expungement and a determination shall be made by the director or designee of the income support division.

[02/01/95; 8.139.610.8 NMAC - Rn, 8 NMAC 3.FSP.610, 05/15/2001; A, 02/28/2007; A, 07/15/2013; A, 07/24/2018]

8.139.610.9

[IDENTIFICATION CARDS:

A. The caseworker shall provide a SNAP ID card to each certified household as proof of program eligibility.

(1) The ID card is issued in the name of the household member to whom the SNAP benefits are issued.

(2) The ID card contains a space for the name and signature of the household member to whom the SNAP benefits are issued, and for any authorized representative designated by the household.

(3) Any individual listed on the ID card must sign the ID card before that individual can use it.

(4) If a household does not designate an authorized representative, the caseworker shall void that section on the ID card to prevent names and signatures from being entered at a later date.

B. The caseworker shall issue an ID card to the household at initial certification, recertification, and when the ID card has been lost, stolen, or destroyed.

C. A replacement ID card will be issued when there is a change in the household member to whom the SNAP benefits are issued, or when the caseworker determines that a new ID card is needed.

D. Whenever possible, the caseworker shall collect the ID card being replaced.] **[RESERVED]**

[02/01/95; 8.139.610.9 NMAC - Rn, 8 NMAC 3.FSP.611, 05/15/2001; A,

02/28/2007; A, 07/15/2013; Repealed, 07/24/2018]

8.139.610.11 USE OF ~~[FOOD-STAMP]~~ SNAP BENEFITS:

Pursuant to Section 15(d) of the Food Stamp Act, ~~[food-stamp]~~ SNAP benefits are an obligation of the United States within the meaning of 18 United States Code (U.S.C.) 8. The provisions of Title 18 of the United States Code, "crimes and criminal procedures," relative to counterfeiting, misuse, and/or alteration of obligations of the U.S., are applicable to ~~[food-stamp]~~ SNAP benefits. Any unauthorized issuance, redemption, use, transfer, acquisition, alteration, or possession of ~~[food-stamp]~~ SNAP benefits may subject an individual, partnership, corporation, or other legal entity to prosecution under Sections 15(b) and (c) of the Food Stamp Act or other applicable federal, state, or local law, regulation, or ordinance.

A. General uses:

~~[Food-stamp]~~ SNAP benefits are used by participants to purchase eligible foods, including seeds and plants, for home consumption. A household may designate other individuals to use ~~[the food-stamp]~~ SNAP benefits to purchase food for them. A household is not required to have cooking facilities or access to cooking facilities to participate in the program.

B. Special uses:

Although ~~[food-stamp]~~ SNAP benefits were originally intended to be used by eligible households to purchase food for home consumption, certain households are authorized to use ~~[food-stamp]~~ SNAP benefits to obtain prepared meals or to facilitate their obtaining food. Authorized special uses for ~~[food-coupons]~~ SNAP include:

(1)

Communal dining: Eligible household members 60 years of age or over or SSI recipients and their spouses may use ~~[food-stamp]~~ SNAP benefits to purchase meals prepared at communal dining facilities authorized by FNS. Communal dining facilities include senior citizen centers, apartment buildings

occupied primarily by elderly persons or SSI households, public or private nonprofit establishments (eating or otherwise) that feed elderly persons or SSI recipients, and federally subsidized housing for the elderly at which meals are prepared and served to the residents. They also include private establishments under contract with an appropriate state or local agency to offer meals at concessional prices to elderly persons or SSI recipients.

(2) Meals-on-wheels: Eligible household members 60 years of age or over or members who are homebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and the spouses of such members, may use their [food-stamp] SNAP benefits to purchase meals prepared and delivered to them by a nonprofit meal delivery service authorized by FNS. A meal delivery service is a political subdivision, a private nonprofit organization, or a private establishment with which a state or local agency has contracted for the preparation and delivery of meals at concessional prices to elderly individuals and their spouses, and to the physically or mentally handicapped and individuals otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

(3) Addicts and alcoholics in treatment programs: Members of eligible households who are narcotics addicts or alcoholics who regularly participate in a drug or alcoholic treatment and rehabilitation program may use their [food-stamp] SNAP benefits to purchase meals prepared for them during the course of such programs by a nonprofit organization or institution or a publically operated community mental health center which is authorized by FNS to redeem [food-stamps] SNAP benefits.

(4) Residents in group living arrangements: Eligible residents of a group living arrangement may use their [food-stamp] SNAP benefits to purchase

meals prepared especially for them at a group living arrangement authorized by FNS to redeem [food-stamps] SNAP benefits.

(5) Residents of shelters for battered [women-and-children] persons: Residents of shelters for battered [women-and-children] persons may use their [food-stamp] SNAP benefits to purchase meals prepared specifically for them at a shelter authorized by FNS to redeem [food-stamps] SNAP benefits.

(6) Residents of shelters for the homeless: Homeless households may use their [food-stamp] SNAP benefits to purchase prepared meals from homeless meal providers authorized by FNS.

C. [Food-stamp] SNAP benefits as income: [Food-stamp] SNAP benefits provided to an eligible household will not be considered income or resources for any purpose under federal, state, or local laws, including but not limited to, laws on taxation, welfare, and public assistance programs. No participating state or political subdivision may decrease any other assistance provided to an individual or individuals because such individuals receive [food-stamp] SNAP benefits. [02/01/95; 8.139.610.11 NMAC - Rn, 8 NMAC 3.FSP.614, 05/15/2001; A, 07/24/2018]

8.139.610.12 GENERAL (BENEFIT AMOUNT)

A. The SNAP benefit amount to be issued depends on the number of eligible members in the household and the net monthly income used to determine eligibility.

(1) HSD uses a 30-day calendar month to determine a household's SNAP benefit amount. A household applying on the 31st of the month will be treated as if it applied on the 30th.

(2) When a household is determined eligible, the SNAP benefit amount is calculated, issuance authorization is processed that night, and SNAP benefits are issued the following work day.

B. Maximum [food-

stamp benefit amount] SNAP allotments:

(1) [The maximum food stamp allotment (MFA or maximum food stamp benefit amount) "means the diet required to feed a family of four persons consisting of a man and a woman 20 through 30 years of age, a child six through eight years of age, and a child nine through 11 years of age determined in accordance with USDA calculations". The cost of such a diet is the basis for determining uniform SNAP benefit amounts for all households regardless of their actual composition. To develop maximum SNAP benefit amounts, USDA makes adjustments in the MFA taking into account economies of scale and other adjustments required by law.] The maximum SNAP allotment shall be based on the thrifty food plan (TFP). TFP means the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child six through eight, and a child nine through 11 years of age, determined in accordance with USDA calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition. In order to develop maximum SNAP allotments, USDA shall make household size and other adjustments in the thrifty food plan taking into account economies of scale and other adjustments as required by law. The TFP amounts and maximum allotments are adjusted annually.

(2) Except when SNAP benefits are prorated and when reductions are made at the national level, a household's monthly SNAP benefit amount is equal to the [MFA] maximum SNAP allotment for the household's size reduced by thirty percent of its net monthly income. [The basis of issuance tables (supplement 400-B) contain the maximum SNAP benefit amounts by household size and income.]

(3) [If the tables (supplement 400-B)] are not used, the maximum SNAP benefit amount] The maximum SNAP allotment can be calculated

by multiplying a household's net income by thirty percent, rounding the result up to the next whole dollar, and subtracting that amount from the [MFS] TFP for the appropriate household size [(Subsection E of 8.139.500.8 NMAC)] (<https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information>).

C. Initial month: A household's SNAP benefit amount for the initial month of certification will be based on the day of the month the household applies for SNAP benefits. The household receives SNAP benefits from the date of application to the end of the month, unless the applicant household consists of residents of a public institution.

(1) Applying from institutions: For households applying for SSI and SNAP benefits before release from an institution, the SNAP benefit amount for the initial month of certification will be based on the date of the month the household is released from the institution. The household will receive SNAP benefits from the date of the household's release from the institution to the end of the month.

(2) Benefits less than \$10 ten dollars (\$10.00): If the initial month's calculations yield a SNAP benefit amount of less than \$10 ten dollars (\$10.00), then no issuance will be made for the initial month. For households entitled to no SNAP benefits in the initial month, but eligible in subsequent months, [the caseworker] ISD shall certify a household beginning with the month of application.

D. Minimum benefit amount:

(1) Except during an initial month, all eligible one- and two-person households, including categorically eligible households, will receive a minimum monthly SNAP benefit amount.

(2) Determination: Minimum amounts are determined by federal guidelines and may be adjusted each year. All eligible one and two person households, including categorically eligible households, will receive the

minimum monthly SNAP benefit amount, which can be found at <https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information>

(3) All eligible households with three or more members which are entitled to no benefits (except because of the proration requirements and the provision precluding issuances of less than ten dollars (\$10.00) in an initial month as per Paragraph 2 of Subsection C of 8.139.610.12 NMAC), ISD shall deny the household's application on the grounds that its net income exceeds the level at which benefits are issued. [02/01/95, 07/01/98; 8.139.610.12 NMAC - Rn, 8 NMAC 3.FSP.620, 05/15/2001; A, 02/28/2007; A/E, 04/01/2009; A, 07/15/2013; A/E, 04/01/2018; A, 07/24/2018]

8.139.610.13 CALCULATING THE BENEFIT AMOUNT:

A household's net income is used to determine its [food stamp] SNAP benefit amount. The net income is the gross amount less allowable deductions. To determine the household's net income:

A. The gross monthly income earned by all household members is added to the total monthly unearned income of all household members, less income exclusions, to determine the household's total gross income. The household must qualify at the gross income calculation.

B. The total gross monthly earned income is multiplied by twenty percent; the result is subtracted from the total gross earned income; add the result to the total monthly unearned income; or multiply the total gross monthly earned income by eighty percent and add the result to the total monthly unearned income.

C. Subtract the standard deduction.

D. If the household is entitled to an excess medical deduction, determine if total medical expenses exceed [~~\$35.00~~] 35 dollars (\$35.00). If so, subtract the amount which exceeds [~~\$35.00~~] 35 dollars (\$35.00).

E. Subtract the child

support deduction as determined by Paragraph 2 of Subsection G of 8.139.520.11 NMAC.

F. Subtract allowable monthly dependent care expenses, if any, up to the maximum amount per dependent; if the household has no shelter expenses, the net income has been determined at this point; go to step J.

G. If the household has shelter expenses, divide the result in Subsection F by two.

H. Determine if the household is entitled to an excess shelter expense deduction as follows:

(1) For households not entitled to uncapped shelter:

(a) total the allowable shelter expenses;

(b) subtract from the total shelter expenses fifty percent of the household's monthly income after all other deductions have been subtracted, i.e., the result in Subsection G;

(c) the remaining amount is the excess shelter expense; compare this amount to the current excess shelter deduction limit [in Paragraph 3 of Subsection F of 8.139.500.8 NMAC] as found at <https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information>;

(d) subtract the current excess shelter deduction amount or the result in Paragraph (c), whichever is less, from the household's monthly income determined in Subsection F; the household's net income has been determined; go to step I.

(2) For households entitled to uncapped shelter: Households containing an elderly or disabled member are entitled to an uncapped shelter expense deduction. Such households have the full amount of the shelter expense exceeding fifty percent of the households net income subtracted. To determine the net income for a household entitled to an uncapped shelter expense deduction, complete steps A through G as described above, and then:

(a) total the allowable shelter expenses;

(b) subtract from the total shelter expenses fifty percent of the household's monthly income after all other deductions have been subtracted (the result in Subsection G); the remaining amount is the excess shelter expense;

(c) subtract the amount in Paragraph (b) from the monthly income amount determined in Subsection F; the household's net income has been determined; go to step I.

I. Round each income calculation to the nearest dollar [~~(\$.01 through \$.49 round down; \$.50 through \$.99 round up)~~] (one cent (\$.01) through 49 cents (\$.49) round down; 50 cents (\$.50) through 99 cents (\$.99) round up.)

J. Multiply the household's net income by thirty percent; round the cents up to the nearest dollar, and subtract that amount from the maximum [~~food-stamp~~] SNAP benefit amount for the household's size. The [~~food-stamp~~] SNAP benefit amount for the household is determined. [02/01/95, 10/01/95; 8.139.610.13 NMAC - Rn, 8 NMAC 3.FSP.621, 05/15/2001; A, 07/24/2018]

8.139.610.14 REPLACEMENT OF BENEFITS:

A. Conditions for replacement: Subject to certain restrictions, households may be authorized a replacement issuance when the household reports the food purchased with [~~food-stamp~~] SNAP benefits was destroyed in a household misfortune or natural disaster. The loss must be reported within ten calendar days of the day the food purchased with [~~food-stamp~~] SNAP benefits was destroyed. The loss is ineligible for replacement if the loss is not reported timely.

(1) Replacing benefits: Subject to certain restrictions, households may be authorized a replacement issuance of [~~food-stamp~~] SNAP benefits when the household reports that food purchased

with the [~~food-stamp~~] SNAP benefits was destroyed in a household misfortune or natural disaster.

(2) Reporting the loss: The loss of [~~food-stamp~~] food purchased with SNAP benefits must be reported in a timely manner by the household. The report will be considered timely if the loss is reported within 10 days of the date the food purchased with [~~food-stamp~~] SNAP benefits is destroyed in household misfortune or natural disaster.

(3) Ineligible for replacement: [~~Food-stamp~~] Food purchased with SNAP benefits will not be replaced if:

(a) the household reports that the [~~food-stamp~~] SNAP benefits were lost, stolen, or misplaced after receipt;

(a) the household reports that the [~~food-stamp~~] food purchased with SNAP benefits [~~were~~] was destroyed after receipt in an event other than a household misfortune or natural disaster; or

(c) (b) the loss was not timely reported by the household.

(4) Household responsibilities: To qualify for a replacement, the household must:

(a) report the loss in a timely manner, either orally or in writing; and

(b) sign an affidavit or statement attesting to the loss of the household's [~~food-stamp~~] food purchased with SNAP benefits.

(5) HSD responsibilities: HSD shall issue the replacement [~~food-stamp~~] SNAP benefit amount if warranted, within 10 days after the report of loss, or within two working days of the date that HSD receives the signed affidavit or statement, whichever is later. Replacement of [~~food-stamp~~] SNAP benefits will be delayed until a determination of the value of the benefits can be made.

(6) Affidavits: If a signed affidavit is not received by [~~the caseworker~~] ISD within 10 days

of the date the loss is reported, there will be no replacement. If the 10th day falls on a weekend or holiday, the deadline is the day after the weekend or holiday. The affidavit is retained in the client electronic case record. It attests to the [~~nonreceipt, theft, loss-~~ or] destruction of food purchased with [~~of~~] the original issuance and specifies the reason for the replacement. It shall also state that the household is aware of the penalties for intentional misrepresentation of the facts, including but not limited to, a charge of perjury for a false claim.

(7) Authorization: There will be no limit on the number of replacements a household may be authorized for food purchased with [~~food-stamp~~] SNAP benefits which was destroyed in a household misfortune or natural disaster.

(8) Verification of conditions for replacement: Before replacing destroyed [~~food-stamp benefits or destroyed~~] food purchased with [~~food-stamp~~] SNAP benefits, [~~the caseworker~~] ISD shall determine that the destruction occurred in a household misfortune or natural disaster, such as a fire, as well as in natural disasters affecting more than one household. This is verified through one of the following:

- (a)** collateral contacts; or
- (b)** documentation from a community agency such as but not limited to, the fire department or the red cross; or
- (c) a** home visit; or

(d) FNS has issued a disaster declaration and a household is eligible for emergency [~~food-stamp~~] SNAP benefits; a household cannot receive both the disaster [~~food-stamp~~] SNAP benefit and a replacement benefit for a household misfortune or natural disaster.

B. Calculation of replacement: A replacement of the actual value of the loss not to exceed one month's [~~food-stamp~~] SNAP benefit amount may be issued if food

purchased with ~~[food stamp]~~ SNAP benefits is destroyed in a household misfortune or natural disaster affecting a participating household. HSD will provide a replacement issuance within 10 days of a reported loss.

C. Fair hearings:

A household must be informed of its right to a fair hearing to contest denial of a replacement issuance. Replacements will not be authorized during the appeal process. A replacement is authorized if the appeal is decided in favor of the household.

[02/01/95; 8.139.610.14 NMAC - Rn, 8 NMAC 3.FSP.627, 05/15/2001; A, 02/28/2007; A, 07/24/2018]

8.139.610.15 NATIONAL REDUCTION OR SUSPENSION:

If funding for ~~[the food stamp program]~~ SNAP is depleted, Section 18 of the Food Stamp Act of 1977, as amended, provides for reduction, suspension or cancellation of ~~[food stamp]~~ SNAP benefits for one or more months, or a combination of these three actions.

A. Reduction:

(1) If a reduction in ~~[food stamp]~~ SNAP ~~[benefit amounts]~~ allotments is deemed necessary, the ~~[MFSA]~~ maximum SNAP allotments amounts for all household sizes is reduced by a percentage specified by FNS. The ~~[MFSA]~~ maximum SNAP allotments amounts for each household size ~~[is]~~ are reduced by the same percentage. This results in all households of a given size having their benefits reduced by the same dollar amount. The dollar reduction is smallest for a one-person household and greatest for the largest households. Since the dollar amount is the same for all households of the same size, the rate of reduction is lowest for zero net income households and greatest for the highest net income households.

(2) All one- and two-person households affected by a reduction action are guaranteed a minimum monthly SNAP benefit ~~[of \$10]~~, unless the action is a cancellation of ~~[food stamp]~~ SNAP

benefits, suspension of ~~[food stamp]~~ SNAP benefits, or reduction in ~~[food stamp]~~ SNAP benefits of ninety percent or more of the total amount of benefits projected to be issued in the affected month. The benefit reduction notice issued by USDA specifies whether the minimum ~~[food stamp]~~ SNAP benefit amount will be provided.

(3) SNAP

benefits shall also be able to be adjusted to provide for the rounding of benefit levels of one dollar (\$1.00), three dollars (\$3.00) and five dollars (\$5.00) to two dollars (\$2.00), four dollars (\$4.00) and six dollars (\$6.00), respectively.

B. Suspension or cancellation:

(1) If a decision is made to suspend or cancel the distribution of ~~[food stamp]~~ SNAP benefits in a given month, FNS shall notify HSD of the date the suspension or cancellation will take effect. If ~~[food stamp]~~ SNAP benefits are suspended or cancelled, the ~~[\$10.00]~~ minimum benefit provision for one- and two-person households is disregarded and all households will have their benefits suspended or cancelled.

(2)

Resumption of benefits: Upon notification by FNS that a benefit suspension has ended, HSD shall act immediately to resume benefit issuance to certified households.

C. Notices: ~~[Food stamp]~~ SNAP benefit reductions, suspensions, and cancellations are considered a federal adjustment to ~~[food stamp]~~ SNAP benefits. HSD shall notify all households of benefit reductions, suspensions, or cancellations in accordance with adequate notice provisions in ~~[Subsection C of 8.139.120.10 NMAC]~~ Subsection A of 8.139.120.13 NMAC. HSD shall not provide an adverse action notice to a household affected by a benefit reduction, suspension, or cancellation.

D. Effect of reduction on certification:

(1) **Normal processing:** Eligibility determination

for applicant households under normal (non-expedited) processing will not be affected by a benefit reduction, suspension, or cancellation. HSD shall accept and process applications during a month(s) in which a reduction, suspension, or cancellation is in effect in accordance with 8.139.110.12 NMAC, application processing. The determination of eligibility will also be made according to these provisions. If an applicant household is determined eligible for ~~[food stamp]~~ SNAP benefits and a reduction is in effect, the benefit amount is calculated by reducing the ~~[MFSA]~~ maximum SNAP allotments amount by the appropriate percentage for the applicant's household size and then deducting thirty percent of the household's net ~~[food stamp]~~ SNAP income from the reduced ~~[MFSA]~~ maximum SNAP allotments amount. If an applicant household is determined eligible for ~~[food stamp]~~ SNAP benefits while a suspension or cancellation is in effect, no benefits will be issued to the household until issuance is again authorized by FNS.

(2) Expedited

service: Expedited processing continues during the months in which reductions, suspensions or cancellations are in effect.

(a)

Reductions: Households receiving expedited service in months in which reductions are in effect and that are determined eligible will be issued reduced benefits. The reduced ~~[food stamp]~~ SNAP benefit amount will be made available within the time frame specified for expedited issuance.

(b)

Suspension: Households receiving expedited service in months in which a suspension is in effect and that are determined eligible will have a benefit determination made within the time frames for expedited issuance. If a suspension remains in effect at the time issuance is authorized, the issuance will be suspended until FNS lifts the suspension.

(c)

Cancellations: Households eligible for expedited processing which apply for ~~[food stamp]~~ SNAP benefits

during months in which cancellations are in effect will receive expedited service. The deadline for completing the processing is five calendar days or the end of the month of application, whichever date is later. All other rules for providing expedited service are applicable.

(3)

Certification periods: The reduction, suspension, or cancellation of ~~[food-stamp]~~ SNAP benefits in a given month will have no effect on the certification period assigned to a household. Those households with certification period expiring during a month in which ~~[food-stamp]~~ SNAP benefits have been reduced, suspended or cancelled will be recertified and have a new certification period assigned.

E. Fair hearings:

Any household that has its ~~[food-stamp]~~ SNAP benefit amount reduced, suspended or cancelled as a result of an order issued by FNS may request a fair hearing if the household disagrees with the action. The fair hearing process is subject to the following conditions:

(1) **Basis for**

fair hearings: HSD is not required to hold fair hearings unless the request is based on a household's belief that the ~~[food-stamp]~~ SNAP benefit amount was computed incorrectly under suspension, reduction, or cancellation rules or that such rules were applied or interpreted incorrectly. HSD shall deny a fair hearing to a household that is merely disputing the fact that a reduction, suspension, or cancellation was ordered.

(2)

Continuation of benefits pending fair hearing: Since the reduction, suspension, or cancellation is necessary to avoid an expenditure of funds beyond those appropriated by congress, households do not have a right to continuation of ~~[food-stamp]~~ SNAP benefits pending a fair hearing.

(3)

Retroactive benefits: A household will receive retroactive ~~[food-stamp]~~ SNAP benefits in an appropriate amount if it is found that its ~~[food-stamp]~~ SNAP benefits were reduced

by more than the amount by which HSD was directed to reduce ~~[food-stamp]~~ SNAP benefits.

F. Restoration of benefits:

(1)

HSD shall have issuance services available to serve households receiving restored or retroactive ~~[food-stamp]~~ SNAP benefits for a previous, unaffected month if benefit reduction, suspension or cancellation has been ordered.

(2)

Households whose ~~[food-stamp]~~ SNAP benefits are reduced, suspended or cancelled as a result of these procedures will not be entitled to restoration of lost benefits at a future date. However, if there is a surplus of funds as a result of the reduction or cancellation, FNS will direct HSD to restore benefits to affected households, unless the secretary of agriculture determines that the amount of surplus funds is too small for this to be practical.

(3)

HSD shall design procedures to implement the restoration of ~~[food-stamp]~~ SNAP benefits promptly if FNS directs the restoration of benefits.

[02/01/95; 8.139.610.15 NMAC - Rn, 8 NMAC 3.FSP.635, 05/15/2001; A, 02/28/2007; A, 07/24/2018]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.410 NMAC, Section 11, effective 8/1/2018.

8.200.410.11 CITIZENSHIP:

To be eligible for medicaid, an individual must be a citizen of the United States; United States national or a non-citizen who meets the requirements set forth in either Subsection A or B of 8.200.410.11 NMAC.

A. Non-citizens who entered the United States prior to August 22, 1996: Non-citizens who entered the United States prior to August 22, 1996, will not be subject

to the five-year bar for purposes of medicaid eligibility. These classes of non-citizens are as follows.

(1)

Qualified non-citizens who entered the United States prior to August 22, 1996, and obtained their qualified non-citizen status prior to that date, are eligible for medicaid without the five year waiting period.

(2)

Non-citizens who entered the United States prior to August 22, 1996, and remained continuously present in the United States until the date they obtained qualified non-citizen status on or after August 22, 1996; any single absence from the United States of more than 30 days, or a total aggregate of absences of more than 90 days, is considered to interrupt "continuous presence".

(3)

Lawful Permanent Residents (LPRs) are qualified non-citizens per 8 USC 1641.

(4)

~~[Non-citizens lawfully admitted for permanent residence or are permanently residing in the United States under color of law as follows:~~

~~(a)~~

~~the individual may be eligible for medicaid if the individual is a non-citizen residing in the United States with the knowledge and permission of the United States immigration and customs enforcement (ICE) and ICE does not contemplate enforcing the non-citizens departure; ICE does not contemplate enforcing a non-citizens departure if it is the policy or practice of ICE not to enforce the departure of non-citizens in the same category, or if from all the facts and circumstances in a particular case it appears that ICE is otherwise permitting the non-citizen to reside in the United States indefinitely, as determined by verifying the non-citizens status with ICE;~~

~~(b)~~

~~non-citizens who are permanently residing in the United States under color of law are listed below; none of the categories include applicants for a non-citizen status other than those applicants listed in item (vi) or (xvi)~~

of this Subparagraph; none of the categories allow medicaid eligibility for non-immigrants; for example, students or visitors; also listed are the most commonly used documents that ICE provides to non-citizens in these categories:

(i) non-citizens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7) (Section 203(a)(7) of the Immigration and Nationality Act); ask for a copy of ICE Form I-94 endorsed "refugee-conditional entry";

(ii) non-citizens, including Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5)(Section 212(d)(5) of the Immigration and Nationality Act); for Cuban/Haitian entrant (Status-Pending) reviewable January 15, 1981; (although the forms bear this notation, Cuban/Haitian entrants are admitted under Section 212(d)(5) of the Immigration and Nationality Act);

(iii) non-citizens residing in the United States pursuant to an indefinite stay of deportation; ask for an immigration and naturalization services letter with this information or ICE Form I-94 clearly stated that voluntary departure has been granted for an indefinite period of time;

(iv) non-citizens residing in the United States pursuant to an indefinite voluntary departure; ask for an immigration and naturalization services letter or ICE Form I-94 showing that voluntary departure has been granted for an indefinite time period;

(v) non-citizens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure ICE does not contemplate enforcing; ask for a copy of ICE Form I-94 or Form I-210 or a letter clearly stating that status;

(vi) non-citizens who have filed applications for adjustment of status

pursuant to Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that ICE has accepted as properly filed (within the meaning of 8 CFR 245.2(a)(1) or (2)) and whose departure ICE does not contemplate enforcing; ask for a copy of ICE Form I-94 or I-181 or a passport appropriately stamped;

(vii) non-citizens granted stays of deportation by court order, statute, or regulation, or by individual determination of ICE pursuant to Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105 (a)) or relevant ICE instructions, whose departure that agency does not contemplate enforcing; ask for a copy of ICE Form I-94 or a letter from ICE, or a copy of a court order establishing the non-citizens status;

(viii) non-citizens granted asylum pursuant to Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158); ask for a copy of ICE Form I-94 and a letter establishing this status;

(ix) non-citizens admitted as refugees pursuant to Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or Section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)); ask for a copy of ICE Form I-94 properly endorsed;

(x) non-citizens granted voluntary departure pursuant to Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure ICE does not contemplate enforcing; ask for a Form I-94 or Form I-210 bearing a departure date;

(xi) non-citizens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later; ask for a copy for ICE Form I-210 or a letter showing that departure has been deferred;

(xii) non-citizens residing in the United States under orders of supervision pursuant to Section 242 of the

Immigration and Nationality Act (8 U.S.C. 1252(d)); ask for a copy of Form I-220 B;

(xiii) non-citizens who have entered and continuously resided in the United States since before January 1, 1972, (or any date established by Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259); ask for any proof establishing this entry and continuous residence;

(xiv) non-citizens granted suspension for deportation pursuant to Section 244 of the Immigration and Nationality Act (8 U.S.C. 1254) and whose departure ICE does not contemplate enforcing; ask for an order from an immigration judge showing that deportation has been withheld;

(xv) non-citizens whose deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); ask for an order from an immigration judge showing that deportation has been withheld;

(xvi) any other non-citizens living in the United States with the knowledge and permission of the immigration and naturalization service and whose departure the agency does not contemplate enforcing (including permanent non-immigrants as established by Public Law 99-239, and persons granted extended voluntary departure due to conditions in the non-citizens home country based on a determination by the secretary of state.) A non-qualified non-citizen who was permanently residing in the United States under color of law (PRUCOL) on or before August 22, 1996, does not lose Medicaid eligibility provided all other factors of eligibility continue to be met. These non-citizens are "grandfathered". For these individuals, non-citizen eligibility may continue to be based on the PRUCOL standard. An individual eligible under the PRUCOL standard retains his or her grandfathering rights even if benefits terminate.

B. Qualified non-

citizens who entered the United States on or after August 22, 1996:

(1) Qualified non-citizens who entered the United States on or after August 22, 1996, are barred from medicaid eligibility for a period of five years, other than emergency services (under Category 085), unless meeting an exception below. LPRs who adjust from a status exempt from the five-year bar are not subject to the five-year bar. The five-year bar begins on the date the non-citizen obtained qualified status. The following classes of qualified non-citizens are exempt from the five-year bar:

- (a) a non-citizen admitted to the United States as a refugee under Section 207 of the Immigration and Nationality Act;
- (b) a non-citizen granted asylum under Section 208 of the Immigration and Nationality Act;
- (c) a non-citizen whose deportation is withheld under Section 243(h) of the Immigration and Nationality Act;
- (d) a non-citizen who is lawfully residing in the state and who is a veteran with an honorable discharge not on account of non-citizen status; is on active duty other than on active duty for training, in the armed forces of the United States; or the spouse or unmarried dependent child under the age of 18 of such veteran or active duty non-citizen;
- (e) a non-citizen who was granted status as a Cuban and Haitian entrant, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;
- (f) a non-citizen granted Amerasian immigrant status as defined under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988;
- (g) victims of a severe form of trafficking, in accordance with Section 107(b)(1) of the Trafficking

Victims Protection Act of 2000, P.L. 106-386;

- (h) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e);
- (i) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies;
- (j) Afghan and Iraqi special immigrants under Section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010;
- (k) non-citizens receiving SSI; and
- (l) battered non-citizens who meet the conditions set forth in Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) as added by Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208 (IIRIRA), and amended by Section 5571 of the Balanced Budget Act of 1997, P.L. 105-33 (BBA), and Section 1508 of the Violence Against Women Act of 2000, P.L. 106-386; Section 431(c) of PRWORA, as amended, is codified at 8 USC 1641(c). HSD covers battered non-citizens with state general funds until the five year bar is met.
- (2) Qualified non-citizen: A “qualified non-citizen”, for purposes of this regulation, is a non-citizen, who at the time the non-citizen applies for, receives, or attempts to receive a federal public benefit, is:
 - (a) a non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act;
 - (b) a non-citizen who is granted asylum under Section 208 of such act; or
 - (c) a refugee who is admitted to the United States under Section 207 of the act; or
 - (d) an Amerasian who is admitted to the United States under Section 207 of the act; or
 - (e) a non-citizen who is paroled into the

United States under Section 212(d)(5) of such act for a period of at least one year; or

- (f) a non-citizen whose deportation is being withheld under Section 243(h) of such act or under Section 241(b)(3); or
- (g) a non-citizen who is granted conditional entry pursuant to 203(a)(7) or such act as in effect prior to April 1, 1980; or
- (h) a non-citizen who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980); or
- (i) certain battered women and non-citizen children of battered parents (only those who have begun the process of becoming a lawful permanent resident under the Violence Against Women Act); or
- (j) victims of a severe form of trafficking and their spouses, children, siblings, or parents; or
- (k) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e); or
- (l) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies; or
- (m) Afghan and Iraqi special immigrants under Section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010.
- (3) Children under age 21 and pregnant women exempt from the five year bar: As authorized by CHIPRA 2009 legislation, New Mexico medicaid allows lawfully residing children under age 21 and pregnant women, if otherwise eligible including meeting state residency and income requirements, to obtain medicaid coverage. Lawfully residing children under age 21 and pregnant women must meet the residency requirement as set forth in 8.200.410.12 NMAC. A child or pregnant woman is considered lawfully present if he or she is:

- (a) a qualified non-citizen as defined in Section 431 of PRWORA (8 USC Section 1641);
- (b) a non-citizen in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission as defined under 8 USC 1101(a)(15);
- (c) a non-citizen who has been paroled into the United States pursuant to Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. Section 1182(d)(5)) for less than one year, except for a non-citizen paroled for prosecution, for deferred inspection or pending removal proceedings;
- (d) a non-citizen who belongs to one of the following classes:
 - (i) non-citizens currently in temporary resident status pursuant to Section 210 or 245A of the Immigration and Nationality Act (8 U.S.C. Section 1160 or 1255a, respectively);
 - (ii) non-citizens currently under temporary protected status (TPS) pursuant to Section 244 of the Immigration and Nationality Act (8 U.S.C. Section 1254a), and pending applicants for TPS who have been granted employment authorization;
 - (iii) non-citizens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - (iv) family unity beneficiaries pursuant to Section 301 of Pub. L. 101-649, as amended;
 - (v) non-citizens currently under deferred enforced departure (DED) pursuant to a decision made by the president;
 - (vi) non-citizens currently in deferred action status except those with deferred action under "Defined Action for Childhood Arrivals" who are not considered lawfully present.
 - (vii) non-citizens whose visa petitions

- have been approved and who have a pending application for adjustment of status;
- (e) a non-citizen with pending applicants for asylum under Section 208(a) of the INA (8 U.S.C. Section 1158) or for withholding of removal under Section 241(b)(3) of the INA (8 U.S.C. Section 1231) or under the convention against torture who has been granted employment authorization, or is an applicant under the age of 14 and has had an application pending for at least 180 days;
- (f) non-citizens whose applications for withholding of removal under the convention against torture have been granted;
- (g) children who have pending applications for special immigrant juvenile status as described in Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. Section 1101(a)(27)(J));
- ~~(h) non-citizens who are lawfully present in the Commonwealth of the Northern Mariana Islands under 48 USC Section 1806(e);~~
- ~~(i) (h)~~ non-citizens who are lawfully present in American Samoa under the immigration laws of American Samoa; or
- ~~(j) (i)~~ victims of trafficking.
- (4) Non-citizen sponsors (where an affidavit of sponsorship was executed pursuant to Section 213 of the Immigration and Nationality Act subsequent to August 22, 1996): The income and resources of a non-citizen sponsor, of any individual applying for medicaid, are deemed available to the applicant, when an affidavit of support is executed pursuant to Section 213 of the Immigration and Nationality Act, on or after August 22, 1996. This counting of non-citizen sponsor income and resources is effective until the sponsored non-citizen achieves citizenship.
- (5) The

state assures that it provides limited medicaid services for treatment of an emergency medical condition, not related to an organ transplant procedure, as defined in 1903(v)(3) of the social security act and 8.285.400 NMAC and implemented at 42 CFR 440.255, to the following individuals who meet all medicaid eligibility requirements, except documentation of citizenship or satisfactory immigration status or present an SSN.

- (a) qualified non-citizens subject to the five year waiting period described in 8 USC 1613; or
- (b) non-qualified non-citizens, unless covered as a lawfully residing child or pregnant woman by the state under the option in accordance with 1903(v)(4) and implemented at 42 CFR 435.406(b). [8.200.410.11 NMAC - Rp, 8.200.410.11 NMAC, 10/1/2017; A/E, 1/18/2018; A, 8/1/2018]

PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved at its 7/3/2018 hearing, to repeal its rule 6.19.7 NMAC, High School Readiness Assessment System for Career and College (filed 1/30/2009) and replace it with 6.19.7 NMAC, Demonstration of Competency for High School Graduation (adopted on 7/11/2018) and effective 7/24/2018.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 19 PUBLIC SCHOOL ACCOUNTABILITY PART 7 DEMONSTRATION OF COMPETENCY FOR HIGH SCHOOL GRADUATION

6.19.7.1 ISSUING AGENCY: Public Education Department, herein after the

department.

[6.19.7.1 NMAC - Rp, 6.19.7.1 NMAC, 7/24/2018]

6.19.7.2 SCOPE: This rule shall apply to public schools, state educational institutions, and state agencies enrolling high school students except for institutions of higher education and the New Mexico military institute. The rule shall apply beginning with the graduating class of 2022. If any part or application of this rule is held invalid, the remainder of the rule or its application in other situations shall not be affected.

[6.19.7.2 NMAC – Rp, 6.19.7.2 NMAC, 7/24/2018]

6.19.7.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-2C-4.1, and 22-13-1.1 NMSA 1978.

[6.19.7.3 NMAC – Rp, 6.19.7.3 NMAC, 7/24/2018]

6.19.7.4 DURATION: Permanent.

[6.19.7.4 NMAC - Rp, 6.19.7.4 NMAC, 7/24/2018]

6.19.7.5 EFFECTIVE DATE: July 24, 2018, unless a later date is cited at the end of a section.

[6.19.7.5 NMAC - Rp, 6.19.7.5 NMAC, 7/24/2018]

6.19.7.6 OBJECTIVE: The objective of this rule is to establish pathways for demonstrating competency in mathematics, reading, writing, science, and social studies for high school graduation. This rule defines eligibility requirements, establishes appropriate assessment options, and outlines requirements for standards-based portfolios.

[6.19.7.6 NMAC - Rp, 6.19.7.6 NMAC, 7/24/2018]

6.19.7.7 DEFINITIONS:

A. “Alternative assessment” means a department-approved assessment such as a college placement assessment, end-of-course exam, or diagnostic assessment used to demonstrate competency for high school graduation. Assessments shall

be published in the department’s graduation manual and include only nationally and statewide-normed standardized assessments.

B. “Alternative demonstration of competency” or “ADC” means a department-approved, alternative option used to demonstrate competency in mathematics, reading, writing, science, or social studies for high school graduation, specifically an end of course exam, alternative assessment, or competency-based alternative as defined in Subsections A, E, and H of 6.19.7.7 NMAC.

C. “Artifacts” means independently-created student work that demonstrates competency in the core content areas. Artifacts may include work from as early as grade 10.

D. “College placement assessment” means a department-approved assessment measuring the readiness of a high school student for success in higher education. College placement assessments shall include nationally-normed standardized assessments used for college admissions, international baccalaureate assessments, or advanced placement exams. Assessments shall be published in the department’s graduation manual.

E. “Competency-based alternative” means department-approved options such as industry-recognized credentials or certificates, programs of study, dual enrollment credits, or standards-based portfolios used to demonstrate competency of state standards for high school graduation.

F. “Core content areas” means mathematics, reading, writing, science, and social studies.

G. “Diagnostic assessment” means a department-approved assessment that measures the accurate placement of students in postsecondary courses.

H. “End-of-course exam” or “EOC” means the department-approved exam administered to assess student content knowledge upon completion of a

course.

I. “Local Education Agency” or “LEA” means a local school district or state-chartered charter school.

J. “Primary demonstration of competency” means the primary assessment adopted by the state to serve as the first and preferred indicator of student competency in each core content area.

K. “Program of study” means a progressive continuum of courses that may be offered across grades nine through 12 to provide technical training, training to prepare for employment, and training to prepare for entry into postsecondary education.

L. “Standards-based portfolio” means the collection of artifacts that demonstrate a student’s mastery of state standards in writing, science, or social studies.

M. “Workforce readiness assessment” means a department-approved assessment developed for the purpose of measuring the readiness of a high school student for success in a career. Workforce readiness assessments may include department-approved standardized assessments or industry-recognized certifications or credentials.

[6.19.7.7 NMAC - Rp, 6.19.7.7 NMAC, 7/24/2018]

6.19.7.8 GENERAL REQUIREMENTS FOR DEMONSTRATIONS OF COMPETENCY:

A. In accordance with 6.19.7 NMAC, the department shall annually develop and publish a graduation manual for each graduating class starting with the class of 2022. The manual shall be published on the department’s website or available upon request. The graduation manual shall include information on graduation requirements, primary demonstrations of competency, alternative assessments, and competency-based alternatives.

B. Students may demonstrate competency in each

of the core content areas through the primary demonstration of competency, alternative assessments, or competency-based alternatives as outlined in Sections 10 through 14 of 6.19.7 NMAC.

(1)**Standards-based portfolio.**

Portfolios may be used as a demonstration of competency in writing, science, or social studies. Portfolio artifacts may include student work from as early as grade 10.

(2)

Insufficient indicators. Alternative demonstrations of competency of state standards for high school graduation shall not include the following:

(a)

artifacts which are not the product of the student's independent work;

(b)

collaborations in which an individual student's contributions cannot be distinguished;

(c)

teacher or employer recommendations;

(d)

artifacts that are not related to content areas required for graduation;

(e)

letters of acceptance from higher education institutions;

(f)

assessments not included in the graduation manual; or

(g)

assessments developed by LEAs, schools, or individual teachers.

C. LEAs shall offer the opportunity to make an additional attempt on the primary demonstration of competency to any student who does not demonstrate competency on their first attempt.

D. LEAs and school boards may offer all or some of the ADCs outlined in 6.19.7 NMAC with the exception of assessments required by the state. LEAs and school boards shall not provide options that are not outlined by the department.

E. If at the end of grade twelve a student has not demonstrated competency of state standards in the core content areas, the student shall be issued a

certificate indicating course credits earned and grade level completed. Students issued a certificate may provide alternative demonstrations of competency within five years of exiting a public school or state educational institution in order to satisfy competency in required core content areas and earn a New Mexico diploma of excellence.

F. Students with an IEP that provides for individualized graduation indicators shall adhere to the expectations for either the modified or ability option outlined in the graduation manual. Students shall attempt the assessments defined in their IEP as the primary demonstration of competency before leveraging an ADC. Individualized passing scores on primary and alternative assessments, as well as appropriate modifications to the competency-based alternatives, shall be determined by the IEP team. Individualized passing scores may be subject to department review. Students following the requirements for the modified or ability option who meet the competency requirements established in their IEP on the primary demonstration of competency, an alternative assessment, or a competency-based alternative shall earn a New Mexico diploma of excellence.

G. Schools shall ensure that all grade 11 students participate in the readiness assessment system pursuant to 22-2C-4.1 NMSA 1978. Students shall select and participate in one or more of the following as defined by the department at no cost to the student:

(1) a college placement assessment;

(2) a workforce readiness assessment; or

(3) an alternative demonstration of competency.

[6.19.7.8 NMAC - Rp, 6.19.7.8 NMAC, 7/24/2018]

6.19.7.9 DATA REPORTING AND GRADUATION RATES:

A. Data reporting.

LEAs shall provide data documenting the use of ADCs on a timeline and in a format that is in alignment with end of year data reporting requirements. LEAs shall report the percentage of students having graduated under the following categories, disaggregated by the federally required subgroups of students:

(1) recipients of the New Mexico diploma of excellence who did not utilize an ADC; and

(2) recipients of the New Mexico diploma of excellence who utilized at least one ADC to demonstrate competency for high school graduation, disaggregated by the type of ADC used and the core content area.

B. Department

audits. The department may conduct annual, randomized audits at the school and LEA level to monitor the implementation of 6.19.7 NMAC. LEAs shall cooperate with department audits. Audits may include review and analysis of any of the following:

(1) standards-based portfolios;

(2) scoring of completed standards-based portfolios;

(3) student records indicating graduation pathways; or

(4) other information or materials deemed necessary by the department.

C. Recordkeeping.

Electronic records of alternative demonstrations of competency shall be kept by LEAs for no fewer than five years and in accordance with federal and state requirements. [6.19.7.9 NMAC - Rp, 6.19.7.9 NMAC, 7/24/2018]

6.19.7.10 DEMONSTRATION OF COMPETENCY IN MATHEMATICS:

A. Primary demonstration of competency in mathematics. Students shall attempt to demonstrate competency in mathematics using the primary demonstration of competency in one or more of the following: algebra II,

geometry, or integrated mathematics II or III.

B. Alternative assessments in mathematics. A student who does not demonstrate competency on the primary demonstration of competency may leverage an alternative assessment.

(1) If a student has made one attempt on the primary demonstration of competency in mathematics, the student shall be eligible to use any of the following assessments to demonstrate competency:

(a) EOC in algebra II, geometry, pre-calculus, or integrated mathematics II or III; or

(b) alternative assessments in mathematics as defined in the graduation manual.

(2) Passing scores to qualify for demonstration of competency using an alternative assessment shall be determined by the department and provided in the graduation manual.

C. Competency-based alternatives in mathematics. A student who does not demonstrate competency after making at least one attempt on the primary demonstration of competency in mathematics may leverage a competency-based alternative.

(1) Students leveraging competency-based alternatives shall accomplish at least one of the following in addition to completing one of the competency-based alternatives outlined in Paragraph (2) of Subsection C of 6.19.7.10 NMAC:

(a) earn a grade of at least 3.0 on a 4.0 scale in the coursework required for graduation in algebra II, geometry, or integrated mathematics II or III;

(b) meet the performance level of “approaches expectations” on the primary demonstration of competency for algebra II, geometry, integrated mathematics II or III;

(c) enroll in and pass no fewer than four

courses over the duration of grade 12, including a course in algebra II, geometry, or integrated mathematics II or III;

(d) earn an offer letter from a branch of the United States military for full-time enlistment;

(e) earn acceptance into an apprenticeship; or

(f) complete a department-approved internship for credit.

(2) A competency-based alternative in mathematics shall be one of the following:

(a) attainment of a department-approved, industry-recognized certificate or credential in an area that incorporates skills in mathematics, as determined by the department;

(b) completion of a program of study with courses that integrate state standards for mathematics, as determined by the department, with a minimum grade point average of 3.0 on a 4.0 scale; or

(c) attainment of at least one dual enrollment credit with a minimum grade of 3.0 on a 4.0 scale in a mathematics course approved by the department.
[6.19.7.10 NMAC - Rp, 6.19.7.10 NMAC, 7/24/2018]

6.19.7.11 DEMONSTRATION OF COMPETENCY IN READING:

A. Primary demonstration of competency in reading. Students shall attempt to demonstrate competency in reading using the primary demonstration of competency in grade eleven English language arts.

B. Alternative assessments in reading. A student who does not demonstrate competency in reading on the primary demonstration of competency may leverage an alternative assessment.

(1) If a student has made one attempt on the primary demonstration of

competency in reading, the student shall be eligible to use any of the following assessments to demonstrate competency:

(a) EOC in grade 11 or 12 reading; or

(b) alternative assessments in reading as defined in the graduation manual.

(2) Passing scores to qualify for demonstration of competency using an alternative assessment shall be determined by the department and provided in the graduation manual.

C. Competency-based alternatives in reading. A student who does not demonstrate competency in reading after making at least one attempt on the primary demonstration of competency in reading may leverage a competency-based alternative.

(1) Students leveraging competency-based alternatives shall accomplish at least one of the following in addition to completing one of the competency-based alternatives outlined in Paragraph (2) of Subsection C of 6.19.7.11 NMAC:

(a) earn a grade of at least 3.0 or higher on a 4.0 scale in the coursework required for graduation in grade eleven or twelve English language arts;

(b) meet the performance level of “approaches expectations” on the primary demonstration of competency for grade eleven English language arts;

(c) enroll in and pass no fewer than four courses over the duration of grade twelve including a course in grade twelve English language arts;

(d) earn an offer letter from a branch of the United States military for full-time enlistment;

(e) earn acceptance into an apprenticeship; or

(f) complete a department-approved internship for credit.

(2) A competency-based alternative in reading shall be one of the following:

(a) attainment of a department-approved, industry-recognized certificate or credential in an area that incorporates skills in grade 11 or 12 reading, as determined by the department;

(b) completion of a program of study with courses that integrate state standards for reading, as determined by the department, with a minimum grade point average of 3.0 on a 4.0 scale; or

(c) attainment of at least one dual enrollment credit with a minimum grade of 3.0 on a 4.0 scale in an English language arts course approved by the department. [6.19.7.11 NMAC - Rp, 6.19.7.11 NMAC, 7/24/2018]

6.19.7.12

DEMONSTRATION OF COMPETENCY IN WRITING:

A. Primary demonstration of competency in writing. Students shall attempt to demonstrate competency in writing using the primary demonstration of competency in grade 11 English language arts.

B. Alternative assessments in writing. A student who does not demonstrate competency in writing on the primary demonstration of competency may leverage an alternative assessment.

(1) If a student has made one attempt on the primary demonstration of competency in writing, the student shall be eligible to use any of the following assessments to demonstrate competency:

(a) EOC in grade 11 or 12 writing; or

(b) alternative assessments in writing as defined in the graduation manual.

(2) Passing scores to qualify for demonstration of competency using an alternative assessment shall be determined by the department and provided in the graduation manual.

C. Competency-based alternatives in writing. A student who does not demonstrate competency in writing after making at least one attempt on the primary demonstration of competency in writing may leverage a competency-based alternative.

(1) Students leveraging competency-based alternatives shall accomplish at least one of the following in addition to completing one of the competency-based alternatives outlined in Paragraph (2) of Subsection C of 6.19.7.12 NMAC:

(a) earn a grade point average of at least 3.0 on a 4.0 scale in the coursework required for graduation in grade 11 or 12 English language arts;

(b) meet the performance level of “approaches expectations” on the primary demonstration of competency for grade 11 English language arts;

(c) enroll in and pass no fewer than four courses over the duration of grade 12 including a course in grade 12 English language arts;

(d) earn an offer letter from a branch of the United States military for full-time enlistment;

(e) earn acceptance into an apprenticeship; or

(f) complete a department-approved internship for credit.

(2) A competency-based alternative in writing shall be one of the following:

(a) attainment of a department-approved, industry-recognized certificate or credential in an area that incorporates skills in grade 11 or 12 writing, as determined by the department;

(b) completion of a program of study with courses that integrate state standards for writing, as determined by the department, with a minimum grade point average of 3.0 on a 4.0 scale;

(c)

attainment of at least one dual enrollment credit with a minimum grade of 3.0 on a 4.0 scale in an English language arts course approved by the department; or

(d) completion of a standards-based portfolio demonstrating mastery of grade eleven or twelve state writing standards.

(3) A student leveraging a standards-based portfolio to demonstrate competency in writing shall provide artifacts that demonstrate the student’s ability to apply the knowledge and skills articulated in grade 11 or 12 writing state standards. Portfolio artifacts shall demonstrate the student’s ability to produce clear and coherent writing in which the development, organization, and style are appropriate to the task, purpose, and audience. [6.19.7.12 NMAC - N, 7/24/2018]

6.19.7.13

DEMONSTRATION OF COMPETENCY IN SCIENCE:

A. Primary demonstration of competency in science. Students shall attempt to demonstrate competency in science using the primary demonstration of competency in grade 11 science.

B. Alternative assessments in science. A student who does not demonstrate competency in science on the primary demonstration of competency in grade 11 science may leverage an alternative assessment.

(1) If a student has made one attempt on the primary demonstration of competency in science, the student shall be eligible to use any of the following assessments to demonstrate competency:

(a) EOC in high school level science; or

(b) alternative assessments in science as defined in the graduation manual.

(2) Passing scores to qualify for demonstration of competency using an alternative assessment shall be determined by the department and provided in the graduation manual.

C. Competency-based alternatives in science. A student who does not demonstrate competency in science after making at least one attempt on the primary demonstration of competency in science may leverage a competency-based alternative.

(1) Students leveraging competency-based alternatives shall accomplish at least one of the following in addition to completing one of the competency-based alternatives outlined in Paragraph (2) of Subsection C of 6.19.7.13 NMAC:

- (a) earn a grade of at least 3.0 on a 4.0 scale in the coursework required for graduation in high school science;
 - (b) meet the performance level of “approaches expectations” on the primary demonstration of competency in grade 11 science;
 - (c) enroll in and pass no fewer than four courses over the duration of grade 12 including a course in high school science;
 - (d) earn an offer letter from a branch of the United States military for full-time enlistment;
 - (e) earn acceptance into an apprenticeship; or
 - (f) complete a department-approved internship for credit.
- (2) A competency-based alternative in science shall be one of the following:
- (a) attainment of a department-approved, industry-recognized certificate or credential in an area that incorporates skills in science, as determined by the department;
 - (b) completion of a program of study with courses that integrate state standards for science, as determined by the department, with a minimum grade point average of 3.0 on a 4.0 scale;
 - (c) attainment of at least one dual

enrollment credit with a minimum grade of 3.0 on a 4.0 scale in a science course approved by the department; or

(d) completion of a standards-based portfolio demonstrating mastery of state standards for high school science.

(3) A student leveraging a standards-based portfolio to demonstrate competency in science shall provide artifacts that demonstrate the student’s ability to apply the knowledge and skills articulated in the state standards for high school science. [6.19.7.13 NMAC - N, 7/24/2018]

6.19.7.14 DEMONSTRATION OF COMPETENCY IN SOCIAL STUDIES:

A. Primary demonstration of competency in social studies. Students shall attempt to demonstrate competency in social studies using the primary demonstration of competency in one or more of the following: New Mexico history, U.S. history and geography, world history and geography, U.S. government, or economics.

B. Alternative assessments in social studies. A student who does not demonstrate competency in social studies on the primary demonstration of competency may leverage an alternative assessment.

(1) If a student has made one attempt on the primary demonstration of competency in social studies, the student shall be eligible to use an alternative assessment in social studies, as defined in the graduation manual.

(2) Passing scores to qualify for demonstration of competency using an alternative assessment shall be determined by the department and provided in the graduation manual.

C. Competency-based alternatives in social studies. A student who does not demonstrate competency in social studies after making at least one attempt on the

primary demonstration of competency in social studies may leverage a competency-based alternative.

(1) Students leveraging competency-based alternatives shall accomplish at least one of the following in addition to completing one of the competency-based alternatives outlined in Paragraph (2) of Subsection C of 6.19.7.14 NMAC:

- (a) earn a grade of at least 3.0 on a 4.0 scale in the coursework required for graduation in New Mexico history, U.S. history and geography, world history and geography, U.S. government, or economics;
 - (b) meet the performance level of “approaches expectations” on the primary demonstration of competency in New Mexico history, U.S. history and geography, world history and geography, U.S. government, or economics;
 - (d) enroll in and pass no fewer than four courses over the duration of grade 12 including a course in New Mexico history, U.S. history and geography, world history and geography, U.S. government, or economics;
 - (d) earn an offer letter from a branch of the United States military for full-time enlistment;
 - (e) earn acceptance into an apprenticeship; or
 - (f) complete a department-approved internship for credit.
- (2) A competency-based alternative in social studies shall be one of the following:
- (a) attainment of a department-approved, industry-recognized certificate or credential in an area that incorporates skills in social studies, as determined by the department;
 - (b) completion of a program of study with courses that integrate state standards for social studies, as determined by the department, with a

minimum grade point average of 3.0 on a 4.0 scale;

(c) attainment of at least one dual enrollment credit with a minimum grade of 3.0 on a 4.0 scale in a social studies course approved by the department; or

(d) completion of a standards-based portfolio demonstrating mastery in U.S. government or economics.

(3) A student leveraging a standards-based portfolio to demonstrate competency in social studies shall provide artifacts that demonstrate the student's ability to apply the knowledge and skills articulated in the state standards for U.S. government or economics. [6.19.7.14 NMAC - N, 7/24/2018]

6.19.7.15 STANDARDS-BASED PORTFOLIO: Standards-based portfolio projects may be developed by LEAs.

A. Completion and scoring shall be based on the following:

(1) state standards for specific core content areas; and

(2) department-approved scoring rubrics.

B. Under the guidance of the school administrator, standards-based portfolios shall be submitted to a local review team no later 30 days prior to the graduation date.

C. LEAs and charters shall establish a local review team to score portfolios. Local review teams shall complete annual, department-approved rubric training. Required trainings shall be completed prior to the review of any portfolios.

(1) The review team shall include, at a minimum:

(a) a highly effective or exemplary high school teacher as measured by the NMTEACH evaluation system as defined in 6.69.8 NMAC;

(b) a district level employee or school administrator;

(c) tribal leadership or a designee, if

needed, as determined through tribal consultation; and

(d) the student's IEP case manager, if applicable.

(2) The review team may include:

(a) a representative from a partnering postsecondary institution;

(b) a member of the business community; or

(c) a member of the local school board or governing body.

[6.19.7.15 NMAC - N, 7/24/2018]

HISTORY OF 6.19.7 NMAC:

6.19.7 NMAC - High School Readiness Assessment System for Career and College, filed 1/30/2009 was repealed and replaced by 6.19.7 NMAC - Demonstration of Competency for High School Graduation, effective 7/24/2018.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 19 PUBLIC SCHOOL ACCOUNTABILITY - ASSESSMENT AND ACCOUNTABILITY

PART 9 EARLY LITERACY REMEDIATION, INTERVENTIONS, AND FAMILY ENGAGEMENT

6.19.9.1 ISSUING

AGENCY: Public Education Department, herein after the department.

[6.19.9.1 NMAC - N, 7/24/2018]

6.19.9.2 SCOPE:

All public schools, state education institutions, and educational programs conducted in state institutions, other than the New Mexico military institute. If any part of application of this rule is held invalid, the remainder of the rule or its application in other situations shall not be affected.

[6.19.9.2 NMAC - N, 7/24/2018]

6.19.9.3 STATUTORY

AUTHORITY: This regulation is adopted pursuant to Sections 22-2C-1 to 13, specifically Section 22-2C-6, Subsection E of Section 22-1-1.2, Subsection D of Section 22-2-2, and Subsection B of Section 22-13-1 NMSA 1978.

[6.19.9.3 NMAC - N, 7/24/2018]

6.19.9.4 DURATION:

Permanent.

[6.19.9.4 NMAC - N, 7/24/2018]

6.19.9.5 EFFECTIVE

DATE: July 24, 2018, unless a later date is cited at the end of a section.

[6.19.9.5 NMAC - N, 7/24/2018]

6.19.9.6 OBJECTIVE:

This rule establishes the conditions for improving literacy outcomes for students by outlining interventions, providing mechanisms for notifying and engaging families and teachers, and notifying parents or legal guardians of all available options to improve student progress in literacy.

[6.19.9.6 NMAC - N, 7/24/2018]

6.19.9.7 DEFINITIONS:

A. **"Academic improvement plan"** means a written document developed by the student assistance team that describes the specific content standards required for a certain grade level that a student has not achieved and that prescribes specific remediation programs such as summer school, extended day or week school and tutoring.

B. **"Benchmark assessment for literacy"** means a common, districtwide assessment for student literacy that diagnoses and regularly measures the acquisition of reading skills, including phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency to be given at the beginning of the year, middle of the year, and end of the year.

C. **"English language learner"** means a student whose first or heritage language is not English and who is unable to read, write, speak, or understand English at a level

comparable to grade-level English proficient peers and native English speakers.

D. “Individual student report” means the report that indicates a student’s performance on the required state assessment using scale scores, performance levels, and performance indicators.

E. “Intervention” means the intensive, targeted instruction of individual students or small groups of students, as determined by student performance on the benchmark assessment for literacy, and included as part of the academic improvement plan.

F. “Local education agency or “LEA” means a school district or state-chartered charter school.

G. “Remediation” means tutoring, extended school day or school week programs, summer programs, and other evidence-based interventions and proven models for student improvement.

H. “Student assistance team” or “SAT” means a group consisting of a student’s:

- (1) teacher;
- (2) school counselor;
- (3) school administrator; and
- (4) parent or legal guardian.

[6.19.9.7 NMAC - N, 7/24/2018]

6.19.9.8 GENERAL REQUIREMENTS FOR INTERVENTION, NOTIFICATION, AND REPORTING:

A. For kindergarten and grades one through three, the benchmark assessment for literacy shall be administered at the beginning of year, middle of year, and end of year. Student progress shall be carefully monitored throughout the academic year and shall be clearly communicated to parents or legal guardians through parent notification letters. For English language learners, the assessment shall be grade-level appropriate and in the student’s first language, if appropriate, and

approved by the department.

B. Academic improvement plans shall be developed for students in need of early literacy intervention, as determined by performance on the benchmark assessment for literacy. School administrators shall ensure that academic improvement plans align with department guidance and evidence-based best practices. The department may request to review academic improvement plans at any time.

C. The determination of a student’s literacy strengths and weaknesses, as measured by the benchmark assessment for literacy, shall serve as one of the criteria for offering parents or legal guardians the option for their student to receive an additional year of instruction in the same grade level. The benchmark assessment for literacy results shall also direct the use of daily intervention, remediation, or alternative programming.

D. For kindergarten and grades one through three, LEAs shall track and report student literacy data and information in accordance with department requirements. Student performance shall be measured by the benchmark assessment for literacy, as defined in 6.19.9.7 NMAC. The department may issue additional guidance or provide additional tools to facilitate the collection and reporting of literacy data and information.

(1) LEAs shall report the following data to the department by March 1 of each year:

- (a)** number of students not proficient in literacy, as determined by the middle of year benchmark assessment for literacy;
- (b)** number of student assistance teams convened for students not proficient in literacy; and
- (c)** number of parent notification letters sent regarding individual students not proficient in literacy, as determined by the middle of year benchmark assessment for literacy, pursuant to

6.19.9.9 NMAC.

(2) LEAs shall report the following data to the department by June 1 of each year:

- (a)** number of students not proficient in literacy, as determined by the end of year benchmark assessment for literacy; and
- (b)** number of retention waiver letters signed by parents or legal guardians of students not proficient in literacy, as determined by the end of year benchmark assessment for literacy.

(3) LEAs shall report the following data to the department by August 1 of each year:

- (a)** number of students retained as a result of not being proficient in literacy, as determined by the end of year benchmark assessment for literacy pursuant to 6.19.9.9 NMAC;
- (b)** number of students not proficient in literacy, as determined by the end of year benchmark assessment for literacy, promoted to the next grade;
- (c)** number of students at performance level one in English language arts, according to his or her grade three individual student report for the state assessment;
- (d)** explanation of final determinations of student retention and promotion for which student performance on the end of year benchmark assessment for literacy was not the deciding factor;
- (e)** copy of the LEA’s retention waiver letter template;
- (f)** copies of all parent notification letters sent to parents or legal guardians regarding individual students not proficient in literacy, as determined by the middle of year benchmark assessment for literacy, pursuant to 6.19.9.9 NMAC; and
- (g)** copies of all retention waiver letters signed by parents or legal guardians for individual students not proficient in literacy, as determined by the end of year benchmark assessment for

literacy.

[6.19.9.8 NMAC - N, 7/24/2018]

6.19.9.9 PARENT OR LEGAL GUARDIAN NOTIFICATION AND ENGAGEMENT:

A. If a student is not proficient in literacy, as determined by the middle of year benchmark assessment for literacy, the student's teacher shall notify the student's parent or legal guardian formally, in writing, and hold a parent-teacher conference.

(1) Written notification shall include:

- (a)** student performance on the benchmark assessment for literacy and ongoing progress monitoring;
- (b)** specific interventions implemented to-date;
- (c)** strategies for parents or legal guardians to implement at home; and
- (d)** parent or legal guardian options including:
 - (i)** daily intervention;
 - (ii)** remediation; or
 - (iii)** alternative programs.

(2) During the parent-teacher conference, the teacher shall review:

- (a)** the student's performance in comparison to grade-level literacy standards;
- (b)** results that indicate the student is not proficient in literacy as determined by benchmark assessments for literacy;
- (c)** goals for student growth that will lead to proficiency in literacy by the end of the academic year; and
- (d)** whether or not the student is on track to be college and career ready as measured by the middle of the year benchmark assessment for literacy.

B. Following the middle of the year notification and

parent conference, the SAT shall develop an academic improvement plan for any student not proficient in literacy, as determined by the middle of year benchmark assessment for literacy. The academic improvement plan shall clearly outline progress monitoring activities, associated timelines, and delegation of responsibilities for those interventions to ensure student progress toward proficiency in literacy by the end of the year.

C. If a student has not achieved grade-level literacy proficiency by the end of year benchmark assessment for literacy, the student's teacher shall notify the student's parent or legal guardian formally, in writing.

- (1)** Written notification shall include:
- (a)** student performance on the benchmark assessment for literacy;
 - (b)** specific interventions implemented to-date;
 - (c)** strategies for parents or legal guardians to implement at home; and
 - (d)** a retention option pursuant to Section 22-2C-6 NMSA 1978.
- (2)** Retention shall ensure that a student receives an additional year of instruction in the same grade with an amended academic improvement plan. If a student's parent or legal guardian decides not to retain the student, the parent or legal guardian shall sign a retention waiver expressing their desire for the student to be promoted to the next higher grade with an academic improvement plan designed to address specific deficiencies, including those in early literacy. A retention waiver shall only prevent the student's retention for one school year. If the student fails to reach academic proficiency, as determined by the benchmark assessment for literacy and other measures, the school shall retain the student the following year.

D. Parents and legal guardians shall be notified of their

students' results on required state assessments and provided with their individual student reports no later than 30 days following receipt by LEAs.

[6.19.9.9 NMAC - N, 7/24/2018]

6.19.9.10 EXEMPTIONS:

Schools may only exempt students from retention for good cause or pursuant to the completion of a retention waiver letter provided by the LEA. A student who is promoted with an exemption shall continue to receive interventions prescribed in his or her academic improvement plan until proficiency in literacy has been met as determined by a benchmark assessment for literacy.

A. Good cause exemptions shall be limited to the following:

- (1)** students with disabilities whose individualized education programs (IEPs) indicate that participation in the benchmark assessment for literacy is not appropriate, pursuant to Subsection I of Section 22-2C-6 NMSA 1978, or other applicable state laws and regulations;
- (2)** students with disabilities who:
 - (a)** participate in the benchmark assessment for literacy;
 - (b)** have IEPs or section 504 plans that reflect that they have received literacy intervention for more than two years;
 - (c)** have not reach proficiency in literacy; and
 - (d)** were previously retained in kindergarten or grades one, two, or three.
- (3)** students who have been previously retained in their current grade; or
- (4)** students identified as English language learners who have had fewer than three years of instruction in schools in the United States.

B. Documentation to support any request for exemption shall be collected and submitted

by the student’s teacher(s) or case manager to the school principal indicating why promotion is appropriate. Documentation shall include:

(1) the reason for exemption pursuant to Subsection A of 6.19.9.10 NMAC; and

(2) an existing academic improvement plan or IEP.

C. The school principal shall review and discuss the recommendation with the SAT and determine whether or not the student qualifies for the requested exemption. If the school principal determines that, based on the provided documentation, the student qualifies for the requested exemption, the school principal shall make such a recommendation in writing to the superintendent or charter school administrator. The superintendent or charter school administrator shall accept or reject the school principal’s recommendation in writing.
[6.19.9.10 NMAC - N, 7/24/2018]

6.19.9.11 ACCELERATION OPTIONS: Academically challenging curriculum options that provide accelerated instruction shall be made available to public school students in kindergarten and grades one through three who have not already been identified as gifted.

A. At a minimum, each school shall offer the following options:

(1) whole-grade promotion; and

(2) subject-matter acceleration.

B. Additional options may include the following:

(1) enriched science, technology, engineering, and mathematics;

(2) enrichment programs;

(3) flexible grouping;

(4) advanced academic courses;

(5) combined classes;

(6) self-paced instruction;

(7) curriculum compacting;

(8) advanced-content instruction; and

(9) online instruction in personalized, higher grade level content.
[6.19.9.11 NMAC - N, 7/24/2018]

6.19.9.12 ELIGIBILITY AND PROCEDURAL REQUIREMENTS FOR ACCELERATION:

A. LEAs shall establish student eligibility requirements and procedural requirements for any whole-grade promotion or subject-matter acceleration. Student eligibility requirements and procedural requirements established by the LEA shall be included in the LEA’s comprehensive student progression plan.

B. School principals shall establish a process by which parents or legal guardians may request student participation in acceleration options offered at their school.

(1) Each principal shall inform parents or legal guardians and students of the options available at the school and the associated eligibility requirements for each option.

(2) If the parent or legal guardian selects one of these options, and the student meets the eligibility requirements established by the LEA, the student shall be provided the opportunity to participate in the acceleration option.

C. When establishing student eligibility requirements for acceleration, principals and LEAs shall consider, at a minimum:

(1) the student’s performance on a locally determined assessment;

(2) the student’s performance as indicated on his or her individual student report;

(3) the student’s grade point average;

(4) the student’s attendance record;

(5) the student’s conduct record;

(6)

recommendations from one or more of the student’s teachers in core-curricula courses;

(7) recommendations from a certified school counselor or social worker, if one is assigned to the school in which the student is enrolled; and

(8) recommendations from the student’s parent or legal guardian.
[6.19.9.12 NMAC - N, 7/24/2018]

HISTORY OF 6.19.9 NMAC: [RESERVED]

SUPERINTENDENT OF INSURANCE, OFFICE OF

The Superintendent of Insurance, after a rule hearing conducted on 03/29/2018, has approved a repeal of its rule 13.2.2 NMAC, Insurance Holding Companies (filed 01/01/1991) and replaced it with 13.2.2 NMAC, Insurance Holding Companies. The rule was adopted on 7/11/2018 and will be effective 07/24/2018.

The Superintendent of Insurance, after a rule hearing conducted on 03/29/2018, has approved a repeal of its rule 13.2.8 NMAC, Credit for Reinsurance (filed 07/01/1997) and replaced it with 13.2.8 NMAC, Credit for Reinsurance. The rule was adopted on 7/11/2018 and will be effective 07/24/2018.

The Superintendent of Insurance, after a rule hearing conducted on 03/29/2018, has approved a repeal of its rule 13.18.3 NMAC, Creditor Placed Insurance (filed 01/01/1991) and replaced it with 13.2.8 NMAC, Creditor Placed Insurance. The rule was adopted on 7/11/2018 and will be effective 07/24/2018.

**SUPERINTENDENT OF
INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE
CHAPTER 2 INSURANCE
COMPANY LICENSING AND
OPERATION
PART 2 INSURANCE
HOLDING COMPANIES**

13.2.2.1 ISSUING

AGENCY: New Mexico Office of Superintendent of Insurance, P.O. Box 1689, Santa Fe, NM 87504-1689. [13.18.3.1 NMAC – Rp, 13.18.3.1 NMAC, 7/24/2018]

13.2.2.2 SCOPE: This rule applies to all insurers and affiliates subject to the Insurance Holding Company Law, Chapter 59A, Article 37, NMSA 1978. [13.2.2.2 NMAC – Rp, 13.2.2.2 NMAC, 7/24/2018]

13.2.2.3 STATUTORY AUTHORITY: Authority for this rule derives from the superintendent’s powers under Section 59A-2-9 NMSA 1978 and from the Insurance Holding Company Law, Chapter 59A, Article 37, NMSA 1978. [13.2.2.3 NMAC – Rp, 13.2.2.3 NMAC, 7/24/2018]

13.2.2.4 DURATION: Permanent. [13.2.2.4 NMAC – Rp, 13.2.2.4 NMAC, 7/24/2018]

13.2.2.5 EFFECTIVE DATE: July 24, 2018, unless a later date is cited at the end of a section. [13.2.2.5 NMAC – Rp, 13 NMAC 2.2.5, 7/24/2018]

13.2.2.6 OBJECTIVE: The purpose of this rule is to specify the contents of the statements required to be filed with the superintendent pursuant to Chapter 59A, Article 37 NMSA 1978 (“the Insurance Holding Company Law”). [13.2.2.6 NMAC – Rp, 13.2.2.6 NMAC, 7/24/2018]

13.2.2.7 DEFINITIONS: The following terms have the

meaning given, unless the context otherwise requires. Other terms used in this rule have the meanings given in the Insurance Holding Company Law or Chapter 59A NMSA 1978 (“the Insurance Code.”).

A. “executive officer” means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller and any other individual performing functions corresponding to those performed by such officers under whatever title.

B. “NAIC” means the national association of insurance commissioners;

C. “OSI” means the office of superintendent of insurance;

D. “SEC” means the United States securities and exchange commission.

E. “Superintendent” means the superintendent of insurance, the office of superintendent of insurance or employees of the office of superintendent of insurance acting within the scope of the superintendent’s official duties and with the superintendent’s authorization; and

F. “ultimate controlling person” means a person that is not controlled by any other person. [13.2.2.7 NMAC – Rp, 13.2.2.7 NMAC, 7/24/2018]

13.2.2.8 SUBSIDIARIES OF DOMESTIC INSURERS: The authority to invest in subsidiaries under Subsection B of Section 59A-37-3 NMSA 1978 is in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code. [13.2.2.8 NMAC – Rp, 13.2.2.8 NMAC, 7/24/2018]

13.2.2.9 ADEQUACY OF SURPLUS: The factors set forth in Section 59A-37-21 NMSA 1978 are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer’s surplus no single factor is necessarily controlling. The superintendent instead will consider the net effect of

all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the superintendent will consider the extent to which each of these factors varies from company to company. In determining the quality and liquidity of investments in subsidiaries, the superintendent will consider the individual subsidiary and may discount or disallow its valuation to the extent that individual investments so warrant.

[13.2.2.9 NMAC – Rp, 13.2.2.9 NMAC, 7/24/2018]

13.2.2.10 GENERAL REQUIREMENTS FOR PREPARING STATEMENTS:

A. Format: Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by the Insurance Holding Company Law. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the item numbers and captions of all items required, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

B. Number of copies:
(1) The applicant must file two complete copies of each form, including exhibits and all other papers and documents filed as a part of the statement.

(2) A copy of Form C, included at 13.2.2.14 NMAC, shall be filed in each state in which an insurer is authorized to do business, if the insurance commissioner of that state has notified the insurer of its request in writing, in which case the insurer has 20 days from receipt of the notice to file such

form.

C. Filing methods:

Forms shall be filed with the examinations bureau at OSI by personal delivery, US mail, Federal Express or UPS as instructed on the OSI website.

D. Signatures:

At least one of the copies shall be signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

E. Electronic preparation: Forms shall be prepared electronically.

F. Readability:

Forms shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

G. Language and currency: Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States currency.

H. Extension of time to file: If it is impractical to furnish any required information, document or report at the time it is required to be filed, a separate document may be filed with the superintendent:

- (1) identifying the information, document or report in question;
- (2) stating why filing it at the time required is impractical; and
- (3) requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the superintendent enters an order denying the request within 60

days after receiving it.

I. Additional information:

In addition to the information expressly required to be included in each statement, the superintendent may request such further material information, if any, as may be necessary to make the information contained in the statement not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement.

The exhibits shall be marked so as to indicate clearly the subject matters to which they refer.

J. Changes to statements:

Changes to statements shall include on the top of the cover page the phrase: "Change No. [insert number] to Form [insert letter]" and shall indicate the date of the change and not the date of the original filing.

K. Hearing on a Consolidated Basis:

If an applicant requests a hearing on a consolidated basis under Subsection D of Section 59A-37-6 NMSA 1978, in addition to filing the Form A with the superintendent, the applicant shall file a copy of Form A with the NAIC in electronic form. [13.2.2.10 NMAC – Rp, 13.2.2.10 NMAC, 7/24/2018]

13.2.2.11 OPTIONS PERMITTED IN FORMS:

A. Incorporation by reference:

(1) Information required by any item of Form A, Form B, Form D, Form E, or Form F may be incorporated by reference in answer or partial answer to any other item.

(2) Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E or Form F, provided the document is filed as an exhibit to the statement.

(3) Excerpts of documents may be filed as exhibits if

the documents are extensive.

(4)

Documents currently on file with the superintendent which were filed within three years need not be attached as exhibits.

(5) References

to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item.

(6) Matter

shall not be incorporated by reference in any case where the incorporation would render the statement incomplete, unclear or confusing.

B. Summaries:

Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the superintendent which was filed within three years and may be qualified in its entirety by such reference.

C. Omissions:

In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties, the dates of execution, or other details, a copy of only one of the documents need be filed, together with a schedule identifying the omitted documents and setting forth the material details in which the omitted documents differ from the filed documents.

[13.2.2.11 NMAC – Rp, 13.2.2.11 NMAC, 7/24/2018]

13.2.2.12 FORM A:

A. When required:

A person required by Section 59A-37-4 NMSA 1978 to file a statement shall furnish the required information on Form A in accordance with the requirements of this rule. Such a person shall also furnish the required information on Form E, hereby made a part of this rule and described in 13.2.2.16 NMAC.

B. Amendments:

The applicant shall promptly advise the superintendent of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the superintendent's disposition of the application.

C. Information to be furnished in Form A:

(1) Caption:

Place the following caption at the top of the cover page:

FORM A

STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER FILED WITH THE NEW MEXICO SUPERINTENDENT OF INSURANCE

(2) Domestic

insurers: Provide the name and state of domicile of the domestic insurer being acquired.

(a)

if the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of Subsection A of Section 59A-37-4 NMSA 1978, the name of the domestic insurer should be indicated as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company."

(b)

where a Subsection A of Section 59A-37-4 NMSA 1978 insurer is being acquired, references to "the insurer" in this section shall refer to both the domestic subsidiary insurer and the person being acquired.

(3) Applicant:

State the name of the acquiring person.

(4) Date:

Provide the filing date of the statement.

(5)

Designation of agent: State the name, title, address and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

(6) Method

of acquisition: Provide the name and address of the domestic insurer to which this application relates and a brief description of how control is to

be acquired.

(7) Identity and background of the applicant:

(a)

State the name and address of the applicant seeking to acquire control over the insurer.

(b)

If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as the person and any of its predecessors shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.

(c)

Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, the nature of the proceedings and the date when commenced.

(8) Identity and background of individuals associated with the applicant:

On the biographical affidavit, include a third party background check and state the following with respect to 1) the applicant if an individual or 2) all persons who are directors, executive officers or owners of ten percent or more of the voting securities of the applicant, if the applicant is not an individual:

(a)

name and business address;

(b)

present principal business activity,

occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;

(c)

material occupations, positions, offices or employment during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on; if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith; and

(d)

whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last 10 years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

(9)

Nature, source and amount of consideration:

(a)

Describe the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading securities, furnish a description of the transaction, the names of the parties to it, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating to the transaction.

(b)

Explain the criteria used in

determining the nature and amount of such consideration.

(c)

If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, the applicant must specifically request that the lender's identity be kept confidential.

(10) Future

plans of insurer: Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

(11) Voting

securities to be acquired: State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

(12)

Ownership of voting securities:

State the amount of each class of any voting security of the insurer that is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any persons listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC.

(13) Contracts,

arrangements, or understandings with respect to voting securities of the insurer:

Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or

profits, or the giving or withholding of proxies. Such description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.

(14) Recent

purchases of voting securities:

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any shares so purchased are hypothecated.

(15) Recent

recommendations to purchase:

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC during the 12 calendar months preceding the filing of this statement.

(16)

Agreements with broker-dealers:

Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard to such solicitation.

(17) Financial

statements and exhibits:

(a)

List the financial statements, exhibits and three-year financial projections of the insurer or insurers that are attached to this statement as appendices.

(b)

The financial statements shall include the annual financial statements of the persons identified in Subparagraph (c) of Paragraph (7) of Subsection C of 13.2.2.12 NMAC for the preceding

five fiscal years (or for such lesser period as the applicant and its affiliates and any of their predecessors shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if the information is available. The statements may be prepared on either an individual basis, or, unless the superintendent otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business. The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the annual statement of the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.

(c)

File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or 13.2.2.10 NMAC.

(18)

Agreement requirements for enterprise risk management:

Applicant agrees to provide to the best of its knowledge and belief, the information required by Form F within 15 days after the end of the month in which the acquisition of control occurs.

(19) Signature and certification: The following signature and certification are required at the end of Statement A.

Pursuant to the requirements of Section 59A-37-4 NMSA 1978, [insert name of applicant] has caused this application to be duly signed on its behalf in the city of [insert name of city] and state of New Mexico on [insert date].
(SEAL)

(Name of Applicant)
BY: _____

(Title)
Attest: _____

(Signature of Officer)

(Title)

The undersigned deposes and says that they have duly executed the attached application dated [insert date], for and on behalf of [insert name of applicant]; that they are the [insert title of deponent] of such company; and that they are authorized to execute and file this instrument. Deponent further says that they are familiar with the instrument and its contents, and that the facts set forth in the instrument are true to the best of their knowledge, information and belief.

(Signature of deponent)

(Typed name and title of deponent)
[13.2.2.12 NMAC – Rp, 13.2.2.12 NMAC, 7/24/2018]

13.2.2.13 FORM B:

A. When required:

An insurer required by Section 59A-37-11 NMSA 1978 to file an annual registration statement shall file Form B in accordance with the requirements of this rule.

B. Filings on behalf of affiliates: Any authorized insurer

may file a registration statement on behalf of any affiliated insurer or insurers that are required to register under Section 59A-37-11 NMSA 1978.

C. Additional information permitted: A registration statement may include information not required by this rule regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this state.

D. When copy of domiciliary registration permitted: In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report that it is required to file in its state of domicile, provided:

(1) the statement or report contains substantially similar information required to be furnished on Form B; and

(2) the filing insurer is the principal insurance company in the insurance holding company system. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer’s claim that it, in fact, is the principal insurer in the insurance holding company system.

E. Filings by unauthorized insurers: With the prior approval of the superintendent, an unauthorized insurer may follow any of the procedures that could be done by an authorized insurer under Subsections B, C and D of 13.2.2.13 NMAC.

F. Consolidated filings and alternative registration: Any insurer may take advantage of the provisions of Sections 59A-37-16 and 17 NMSA 1978 without obtaining the prior approval of the superintendent. The superintendent, however, reserves the right to require

individual filings if the superintendent deems such filings necessary in the interest of clarity, ease of administration or the public good.

G. Information to be furnished in Form B:

(1) Caption: Place the following caption at the top of the cover page:

FORM B
INSURANCE HOLDING
COMPANY ANNUAL
REGISTRATION STATEMENT
FILED WITH THE NEW MEXICO
OFFICE OF SUPERINTENDENT
OF INSURANCE

(2) Registrant: State the name of the registrant filing the statement.

(3) Other registrants: State the name and address of each insurance company on whose behalf the statement is being filed.

(4) Date: Provide the filing date of the statement.

(5) Designation of agent: State the name, title, address and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

(6) Identity and control of registrant: Furnish the exact name of each insurer registering or being registered, the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the method(s) by which control of each registrant was acquired and is maintained.

(7) Organizational chart: Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. The chart or listing should show the percentage of each class of voting securities of each affiliate that is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by

the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

(8) The

ultimate controlling person:

Provide the following information about the ultimate controlling person in the insurance holding company system:

- (a)** name;
- (b)** home office address;
- (c)** principal executive office address;
- (d)** the organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.;
- (e)** the principal business of the person;
- (f)** the name and address of any person who holds or owns ten percent or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and

if court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of the proceedings and the date when commenced.

(9)

Biographical information: Furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction for crimes other than minor traffic violations.

(10)

Transactions and agreements:

Briefly describe the following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year

between the registrant and its affiliates in such a manner as to permit the proper evaluation of the transaction by the superintendent. Include at least the following information with respect to each: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and the relationship of the affiliated parties to the registrant. No information need be disclosed if such information is not material for purposes of Section 59A-37-11 NMSA 1978. Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of one percent or less of the registrant's admitted assets as of the 31st day of December next preceding shall be deemed not material.

- (a)** loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the registrant or of the registrant by its affiliates;
- (b)** purchases, sales or exchanges of assets;
- (c)** transactions not in the ordinary course of business;
- (d)** guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;
- (e)** all management agreements, service contracts and all cost-sharing arrangements;
- (f)** reinsurance agreements;
- (g)** dividends and other distributions to shareholders;
- (h)** consolidated tax allocation agreements; and
- (i)** any pledge of the registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan

made to any member of the insurance holding company system.

(11) Litigation

or administrative proceedings:

Provide a brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

- (a)** criminal prosecutions or administrative proceedings by any government agency or authority that may be relevant to the trustworthiness of any party to the proceedings; and
- (b)** proceedings that may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganization.

(12)

Statement regarding plan or series of transactions:

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

(13) Financial

statements and exhibits:

- (a)** List under this item the financial statements and exhibits to be attached to this statement as appendices.
- (b)** If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year. If at the time of the initial

registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis; or, unless the superintendent otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

(c)

Other than with respect to the foregoing, such financial statements shall be filed in a standard form and format adopted by the NAIC, unless an alternative form is accepted by the superintendent. Documentation and financial statements filed with the SEC or audited GAAP financial statements shall be deemed to be an appropriate form and format.

(d)

Unless the superintendent otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of the insurer filed with the insurance department of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

(e)

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent

public accountant. The review shall be conducted in accordance with the standards for review of personal financial statements published in the *Personal Financial Statements Guide* by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting practices.

(f)

Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or 13.2.2.10 NMAC.

(14) Signature

and certification: The following signature and certification are required at the end of Form B.

Pursuant to the requirements of Section 59A-37-12 NMSA 1978, registrant has caused this annual registration statement to be duly signed on its behalf in the city of [insert name of city] and state of New Mexico on [insert date].

(SEAL)
BY: _____

(Title)

(Name of Applicant)

Attest: _____

(Signature of Officer)

(Title)

The undersigned deposes and says that they have duly executed the attached annual registration statement dated [insert date], for and on behalf of [insert name of registrant]; that they are the [insert title of deponent] of such company and that they are authorized to execute and file this instrument. Deponent further says that they are familiar with the instrument and its contents, and that the facts set forth in the instrument are

true to the best of their knowledge, information and belief.

(Signature of deponent)

(Typed name and title of deponent)
[13.2.2.13 NMAC – Rp, 13.2.2.13 NMAC, 7/24/2018]

13.2.2.14 FORM C:

A. When required:

An insurer required by Section 59A-37-11 NMSA 1978 to file an annual registration statement shall file Form C in accordance with the requirements of this rule.

B. Where filed:

An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the commissioner of that state.

C. Information to be furnished in Form C:

(1) Caption:

Place the following caption at the top of the cover page:

FORM C
SUMMARY OF CHANGES TO
REGISTRATION STATEMENT
FILED WITH THE
NEW MEXICO OFFICE OF
SUPERINTENDENT OF
INSURANCE

(2)

Registrant: State the name of the registrant filing the statement.

(3) Other

registrants: State the name and address of each insurance company on whose behalf the statement is being filed.

(4) Date:

Provide the filing date of the statement.

(5)

Designation of agent: State the name, title, address and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

(6) Changes:

Furnish a brief description of all items in the current annual registration statement that represent changes from the prior year's annual registration statement in such a manner as to permit the proper evaluation of

the changes by the superintendent. Include specific references to item numbers and captions in the annual registration statement and to the terms contained in them.

(a)

Changes in Paragraph (7) of Subsection G of 13.2.2.13 NMAC.

Changes in the percentage of each class of voting securities held by each affiliate need only be included where such changes result in ownership or holdings of ten percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

(b)

Changes in Paragraph (9) of Subsection G of 13.2.2.13 NMAC.

Include this information only if an individual is, for the first time, made a director or executive officer of the ultimate controlling person; an individual is named president of the ultimate controlling person; or a director or executive officer terminates his or her responsibilities with the ultimate controlling person.

(c)

Changes in Paragraph (10) of Subsection G of 13.2.2.13 NMAC.

If a transaction disclosed on the prior year's annual registration statement has been changed, describe the nature of such change. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction. The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

(7) **Signature**

and certification: The following signature and certification are required at the end of Form C:

Pursuant to the requirements of Section 59A-37-12 NMSA 1978 [insert name of registrant] has caused this annual registration statement to be duly signed on its behalf in the city of [insert name of city] and state of

New Mexico on [insert date].
(SEAL)

(Name of applicant)

BY: _____

Attest: _____

(Signature of officer)

(Title)

The undersigned deposes and says that they have duly executed the attached annual registration statement dated [insert date], for and on behalf of [insert name of registrant]; that they are the [insert title of deponent] of such company; and that they are authorized to execute and file this instrument. Deponent further says that they are familiar with the instrument and its contents, and that the facts set forth in the instrument are true to the best of their knowledge, information and belief.

(Signature of deponent)

(Typed name and title of deponent)
[13.2.2.14 NMAC – Rp, 13.2.2.14 NMAC, 7/24/2018]

13.2.2.15 FORM D:

A. When required:

An insurer required to give notice of a proposed transaction pursuant to Section 59A-37-20 NMSA 1978 shall file Form D in accordance with the requirements of this rule.

B. Information to be furnished in Form D:

(1) Caption:

Place the following caption at the top of the cover page:

FORM D
PRIOR NOTICE OF A
TRANSACTION FILED WITH
THE NEW MEXICO OFFICE
OF SUPERINTENDENT OF
INSURANCE

(2)

Registrant: State the name of the registrant filing the statement.

(3) **Other**

registrants: State the name and address of each insurance company on whose behalf the statement is being filed.

(4) **Date:**

Provide the filing date of the statement.

(5)

Designation of agent: State the name, title, address and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

(6) **Identity of**

parties to transaction: Furnish the following information for each of the parties to the transaction:

(a)

name;

(b)

home office address;

(c)

principal executive office address;

(d)

the organizational structure, i.e. corporation, partnership, individual, trust, etc.;

(e)

a description of the nature of the parties' business operations;

(f)

relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties; and

(g)

where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

(7)

Description of the transaction:

Furnish the following information for each transaction for which notice is being given:

(a)

a statement as to whether notice is being given under Paragraphs (1) through (5) of Subsection B of Section 59A-37-20 NMSA 1978;

(b)

a statement of the nature of the transaction; and

(c)

the proposed effective date of the transaction.

(8) **Sales,**

purchases, exchanges, loans, extensions of credit, guarantees or investments:**(a)**

Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

(b)

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

(c)

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

(d)

No notice need be given if the maximum amount that can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than:

(i)

in the case of non-life insurers, the lesser of three percent of the insurer's

admitted assets or twenty-five percent of surplus as regards policyholders; or

(ii)

in the case of life insurers, three percent of the insurer's admitted assets, each as of the 31st day of December next preceding.

(9) Loans**or extensions of credit to a non-affiliate:****(a)**

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

(b)

No notice need be given if the loan or extension of credit is less than:

(i)

in the case of non-life insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; or

(ii)

in the case of life insurers, three percent of the insurer's admitted assets, each as of the 31st day of December next preceding.

(10)**Reinsurance:****(a)**

If the transaction is a reinsurance agreement or modification of a reinsurance agreement as described by Paragraph (3) of Subsection B

of Section 59A-37-20 NMSA 1978, or a reinsurance pooling agreement or modification thereto as described by Paragraph (3) of Subsection B of Section 59A-37-20 NMSA 1978, furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

(b)

No notice need be given for reinsurance agreements or modifications if the reinsurance premium or a change in the insurer's liabilities or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years in connection with the reinsurance agreement or modification is less than five percent of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding. Notice shall be given for all reinsurance pooling agreements including modifications thereto.

(11)**Management, service agreements and cost-sharing arrangements:****(a)**

For management and service agreements, furnish:

(i)

a brief description of the managerial responsibilities or services to be performed; and

(ii)

a brief description of the agreement, including a statement of its duration, together with the brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

(b)

For cost-sharing arrangements,

- furnish:
- (i) a brief description of the purpose of the agreement;
 - (ii) a description of the period of time during which the agreement is to be in effect;
 - (iii) a brief description of each party's expenses or costs covered by the agreement;
 - (iv) a brief description of the accounting basis to be used in calculating each party's costs under the agreement;
 - (v) a brief statement as to the effect of the transaction upon the insurer's policyholder surplus;
 - (vi) a statement regarding the cost allocation methods that specifies whether proposed charges are based on "cost or market;" and if market based, the rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable; and
 - (vii) a statement regarding compliance with the *NAIC Accounting Practices and Procedural Manual* regarding expense allocation.

(12) Signature

and certification: The following signature and certification are required at the end of Form D:

Pursuant to the requirements of Section 59A-37-20 NMSA 1978 [insert name of applicant] has caused this application to be duly signed on its behalf in the city of [insert name of city] and state of New Mexico on [insert date].

(SEAL)

(Name of applicant)

BY: _____

(Title)

Attest:

(Signature of officer)

(Title)

The undersigned deposes and says that they have duly executed

the attached application dated [insert date], for and on behalf of [insert name of applicant]; that they are the [insert title of deponent] of such company; and that they are authorized to execute and file this instrument. Deponent further says that they are familiar with the instrument and its contents, and that the facts set forth in the instrument are true to the best of their knowledge, information and belief.

(Signature of deponent)

(Typed name and title of deponent)

[13.2.2.15 NMAC – Rp, 13.2.2.15 NMAC, 7/24/2018]

13.2.2.16 FORM E:

A. When required:

If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to 59A-37-4(A) NMSA 1978, that person shall file a pre-acquisition notification using Form E, which was developed pursuant to Section 59A-37-29 (C.1) NMSA 1978.

Additionally, if non-domiciliary insurer licensed to do business in New Mexico is proposing a merger or acquisition pursuant to Section 59A-37-4 NMSA 1978, that person shall file a preacqisiton notification using Form E. No pre-acquisition notification form need be filed if the acuqisition is beyond the scope of Section 59A-37-4 NMSA 1978 as set forth in Section 59A-37-29 (B) NMSA 1978,

In addition to the information required by Form E, the superintendent may require an expert opinion as to the competitive impact of the proposed acquisition.

B. Information to be furnished in Form E:

(1) Caption:

Place the following caption at the top of the cover page:

FORM E
PRE-ACQUISITION
NOTIFICATION REGARDING
THE POTENTIAL COMPETITIVE
IMPACT OF A PROPOSED
MERGER OR ACQUISITION BY

A NON-DOMICILIARY INSURER DOING BUSINESS IN NEW MEXICO OR BY A DOMESTIC INSURER

(2) Applicant:

State the name of the acquiring or merging person.

(3) Other

person involved in merger or acquisition: State the name of the other person involved in the merger or acquisition.

(4) Date:

Provide the filing date of the statement.

(5)

Designation of agent: State the name, title, address and telephone number of the individual to whom notices and correspondences concerning this statement should be addressed.

(6) Identity

of persons involved: State the names and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.

(7) Identity

of persons affiliated with persons involved: State the names and addresses of the persons affiliated with those listed in Item (6). Describe their affiliations.

(8) Nature

and purpose of proposed merger or acquisition: State the nature and purpose of the proposed merger or acquisition.

(9) Nature

of business: State the nature of the business performed by each of the persons identified in Paragraphs (6) and (7) of Subsection B of 13.2.2.16 NMAC.

(10) Market

and market share:

(a)

For purposes of this question, "market" means direct written insurance premium in New Mexico for a line of business as contained in the annual statement required to be filed by insurers license to do business in this state.

(b)

For each person identified in Paragraphs (6) and (7) of Subsection B of 13.2.2.16 NMAC, state

specifically what market and market share in each relevant insurance market the persons currently enjoy in New Mexico and provide historical market and market share data for the past five years including the source of such data.

(c)

Provide a determination as to whether the proposed acquisition or merger, if consumated, would violate the competitive standards of New Mexico as stated in Section 59A-37-29 NMSA 1978. If the proposed acquisition or merger would violate competitive standards, provide justification of the the acquisition or merger would not substantially lessen competition or create a monopoly in New Mexico. [13.2.2.16 NMAC – Rp, 13.2.2.17 NMAC, 7/24/2018]

13.2.2.17 FORM F:**A. When required:**

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Section 59A-37-30 shall furnish the required information on Form F.

B. Information to be furnished on Form F:**(1) Caption:**

Place to following caption at the top of the cover page:

FORM F
ENTERPRISE RISK REPORT

(2)

Registrant/applicant: State the name of the registrant or applicant filing the statement.

(3) Other

registrants/applicants: State the name and address of each insurance company on whose behalf, or related to which, the statement is being filed.

(4) Date:

Provide the filing date of the statement.

(5)

Designation of agent: State the name, title, address and telephone number of the individual to whom notices and correspondences concerning this statement should be addressed.

(6) Enterprise

risk: The registrant/applicant, to the best of its knowledge and belief, shall provide information regarding

the following areas that could produce enterprise risk as defined in Subsection D of Section 59A-37-2 NMSA 1978, provided such information is not disclosed in the *Insurance Holding Company System Annual Registration Statement* filed on behalf of itself or another insurer for which it is the ultimate controlling person:

(a)

any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;

(b)

acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system;

(c)

any changes of shareholders of the insurance holding company system exceeding ten percent or more of voting securities;

(d)

developments in various investigations, regulatory activities or litigation that may have significant bearing or impact on the insurance holding company system;

(e)

business plan of the insurance holding company system and summarized strategies for the next 12 months;

(f)

identification of material concerns of the insurance holding company system raised by a supervisory college, if any, in the last year;

(g)

identification of insurance holding company system capital resources and material distribution patterns;

(h)

identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);

(i)

information on corporate or parental

guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and

(j)

identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

The registrant/applicant may attach the appropriate form most recently filed with the SEC, provided the registrant/applicant includes specific references to those areas listed in Paragraph (6) of Subsection B of 13.2.2.17 NMAC for which the form provided responsive information. If the registrant/applicant financial statement filed in its country of domiciles, provided the registrant/applicant includes specific reference to those areas in Paragraph (6) for which the financial statement provides responsive information.

(7) Obligation

to report: If the registrant/applicant has not disclosed any information pursuant to Paragraph (6) of Subsection B of 13.2.2.17 NMAC, the registrant/applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Paragraph (6). [13.2.2.17 NMAC – Rp, 13.2.2.17 NMAC, 7/24/2018]

13.2.2.18 FORM G:**A. When required:**

Subject to Section 59A-37-22 NMSA 1978 each registered insurer shall file Form G to report to the superintendent all dividends and other distributions to shareholders within 15 business days following the declaration of such dividends or distributions.

B. Information to be furnished in Form G:**(1) Caption:**

Place the following caption at the top of the cover page:

FORM G
NOTICE OF DECLARATION
OF DIVIDENDS OR OTHER
DISTRIBUTIONS TO
SHAREHOLDERS

(2) Applicant:
Provide the name and address of the insurer filing the report.

(3) Calculations: Provide a copy of the calculations determining the proposed dividends. The work paper shall include the following information:

(a) the amounts, dates and form of payment of all dividends or distributions (including regular dividends, but excluding distributions of the insurer’s own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

(b) surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;

(c) if the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;

(d) if the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and

(e) if the insurer is not a life insurer, the dividends paid to stockholders, excluding distributions of the insurer’s own securities in the preceding two calendar years. [13.2.2.18 NMAC – Rp, 13.2.2.18 NMAC, 7/24/2018]

13.2.2.19 FORM H:

A. When required:

(1) A person claiming that they do not, or will not upon the taking of some proposed action, control another subject person shall file Form H in accordance with this rule.

(2) A person requesting termination of registration shall file Form H in accordance with this rule.

B. A request for termination of registration shall be deemed to have been granted unless the superintendent, within thirty days after receipt of the request, notifies the registrant otherwise.

C. Information required in Form H:

(1) Caption:
Place the following caption at the top of the cover page:

FORM H
DISCLAIMER OF AFFILIATION OR REQUEST FOR TERMINATION OF REGISTRATION

(2) Disclaimant: Provide the name, address, and telephone number and email of the person disclaiming affiliation or requesting termination of registration.

(3) Subject person: Provide the name, address, and telephone number and email of the person no longer affiliated with or subject to the control of the disclaimant.

(4) Voting securities: Provide the number of authorized, issued and outstanding voting securities of the subject person.

(5) Shares held by disclaimant: With respect to the disclaimant and all affiliates of the disclaimant, indicate the number and percentage of shares of the subject person’s voting securities which are held of record or known to be beneficially owned, and the number of shares the disclaimant has a right to acquire, directly or indirectly.

(6) Affiliations: Describe all material relationships and bases for affiliation between the subject person and disclaimant and all affiliates of the disclaimant.

(7) Explanation: State why the disclaimant should not be considered to control the subject person. [13.2.2.19 NMAC – Rp, 13.2.2.19 NMAC, 7/24/2018]

13.2.2.20 FORM I:

A. When required:

Each domestic insurer required by Section 59A-37-22 NMSA 1978 to

give prior notice to the superintendent of the declaration of any extraordinary dividend or any other extraordinary distribution to its shareholders shall file Form I in accordance with the requirements of this rule.

B. Information to be furnished in Form I:

(1) Caption:
Place the following caption at the top of the cover page:

FORM I
REQUEST FOR APPROVAL OF EXTRAORDINARY DIVIDENDS OR ANY OTHER EXTRAORDINARY DISTRIBUTION TO SHAREHOLDERS

(2) Applicant:
Provide the name and address of the insurer filing the request.

(3) Amount:
State the amount of the proposed dividend.

(4) Payment date: Indicate the date established for payment of the dividend.

(5) Mode of payment: State whether the dividend is to be paid in cash or other property and, if in property, describe the property, its cost, and its fair market value, and explain the basis for valuation.

(6) Calculations: Provide a copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

(a) the amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer’s own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

(b) Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;

(c)

if the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;

(d) if the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and

(e) if the insurer is not a life insurer, the dividends paid to stockholders, excluding distributions of the insurer's own securities in the preceding two calendar years.

(7) Balance

sheet: Provide a balance sheet and statement of income for the period intervening from the last annual statement filed with the superintendent and the end of the month preceding the month in which the request for dividend approval is submitted.

(8) Effect on

surplus: Provide a brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs. [13.2.2.20 NMAC – Rp, 13.2.2.20 NMAC, 7/24/2018]

13.2.2.21 SEVERABILITY

CLAUSE: If any provision of these rules or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application, and to that end the provisions of these rules are severable.

[13.2.2.21 NMAC – Rp, 13.2.2.21 NMAC, 7/24/2018]

HISTORY OF 13.2.2 NMAC:

Pre-NMAC History The subject matter of this rule was previously filed with the State Records Center as: ID 75-1, Regulations Governing the Registration of Insurers Under the Insurance Holding Company System,

filed 3/27/1975. INS 80-1, Insurance Holding Company Rule, on 2/29/1980. Rule No. SCC-93-6-IN, Insurance Holding Company Statements, on 12/1/1993.

History of Repealed Material:

13.2.2 NMAC - Insurance Holding Companies, filed 7/1/1997 was repealed and replaced by 13.2.2 NMAC - Insurance Holding Companies, effective 7/24/2018.

SUPERINTENDENT OF INSURANCE, OFFICE OF

**TITLE 13 INSURANCE
CHAPTER 2 INSURANCE
COMPANY LICENSING AND
OPERATION
PART 8 CREDIT FOR
REINSURANCE**

13.2.8.1 ISSUING AGENCY: Office of Superintendent of Insurance (OSI), Post Office Box 1689, Santa Fe, NM 87504-1689. [13.2.8.1 NMAC;- Rp, 13.2.8.1 NMAC, 7/24/2018]

13.2.8.2 SCOPE: This rule applies to all domestic insurers. [13.2.8.2 NMAC;- Rp, 13.2.8.2 NMAC, 7/24/2018]

13.2.8.3 STATUTORY AUTHORITY: Sections 59A-2-9 and 59A-7-11 NMSA 1978. [13.2.8.3 NMAC;- Rp, 13.2.8.3 NMAC, 7/24/2018]

13.2.8.4 DURATION: Permanent. [13.2.8.4 NMAC;- Rp, 13.2.8.4 NMAC, 7/24/2018]

13.2.8.5 EFFECTIVE DATE: July 24, 2018, unless a later date is cited at the end of a section. [13.2.8.5 NMAC;- Rp, 13.2.8.5 NMAC, 7/24/2018]

13.2.8.6 OBJECTIVE: The purpose of this rule is to implement Section 59A-7-11 NMSA 1978. [13.2.8.6 NMAC;- Rp, 13.2.8.6

NMAC, 7/24/2018]

13.2.8.7 DEFINITIONS:

A. As used in this rule: **(1) "Annual**

financial statement" means the statement required by Section 59A-5-29 NMSA 1978.

(2)

"Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the SVO and that either:

(a)

represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(i)

are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(ii)

were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the secretary of housing and urban development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the secretary of housing and urban development pursuant to 12 U.S.C.A. Section 1703; or

(b)

is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Subparagraph (a) of this subsection;

(3) **“NAIC”**
means the national association of insurance commissioners;

(4) **“OECD”**
means the organization for economic cooperation and development;

(5) **“Promissory note”**, when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument;

(6) **“Qualified United States financial institution”**
has the meaning given in Subsection D of Section 59A-7-11 NMSA 1978;

(7) **“SVO”**
means the securities valuation office of the NAIC; and

(8) **“Superintendent”** means the superintendent of insurance, the office of superintendent of insurance or employees of the office of superintendent of insurance acting within the scope of the superintendent’s official duties and with the superintendent’s authorization.

B. As used in the referenced sections of this rule:

(1) **“Beneficiary”**, as used in 13.2.8.22 NMAC, means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator);

(2) **“Beneficiary”**, as used in 13.2.8.15 NMAC through 13.2.8.17 NMAC and

13.2.8.21 NMAC means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator);

(3) **“Grantor”**, as used 13.2.8.15 NMAC through 13.2.8.17 NMAC, means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer;

(4) **“Liabilities”**, as used in 13.2.8.11 NMAC, means the assuming insurer’s gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

(a) for business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance;

(i) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

(ii) reserves for losses reported and outstanding;

(iii) reserves for losses incurred but not reported;

(iv) reserves for allocated loss expenses; and

(v) unearned premiums; or

(b) for business ceded by domestic insurers authorized to write life, health and annuity insurance:

(i) aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

(ii) aggregate reserves for accident and health policies;

(iii) deposit funds and other liabilities without life or disability contingencies; and

(iv) liabilities for policy and contract claims;

(5) **“Obligations”**, as used in Subsection K of 13.2.8.15 NMAC, means:

(a) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(b) reserves for reinsured losses reported and outstanding;

(c) reserves for reinsured losses incurred but not reported; and

(d) reserves for allocated reinsured loss expenses and unearned premiums; and

(6) **“Substantially similar standards”**, as used in 13.2.8.10 NMAC, means credit for reinsurance standards which the superintendent determines are equal to or exceed the standards of Section 59A-7-11 NMSA 1978 and this rule.

C. As used in Paragraph (6) of Subsection B of Section 59A-7-11 NMSA 1978, **“jurisdiction”** means any state, district or territory of the United States and any lawful national government. [13.2.8.7 NMAC; - Rp, 13.2.8.7 NMAC, 7/24/2018]

13.2.8.8 CREDIT FOR REINSURANCE - REINSURER LICENSED IN THIS STATE:
Pursuant to Paragraph (1) of Subsection B of Section 59A-7-11 NMSA 1978, the superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

[13.2.8.8 NMAC;- Rp, 13.2.8.8 NMAC, 7/24/2018]

13.2.8.9 CREDIT FOR REINSURANCE - ACCREDITED REINSURERS:

A. The superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of the date on which statutory financial statement credit for reinsurance is claimed.

B. In addition to the requirements specified in Section 59A-7-11 NMSA 1978, the assuming insurer shall:

(1) file a properly executed *Form AR-1* with the superintendent as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

(2) file with the superintendent a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(3) file annually with the superintendent a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

(4) maintain a surplus as regards policyholders in an amount not less than \$20,000,000, or obtain the affirmative approval of the superintendent upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

C. If the superintendent determines that the assuming insurer has failed to meet or maintain any of the qualifications required by Section

59A-7-11 NMSA 1978 or this rule, the superintendent may upon written notice and opportunity for hearing suspend or revoke the accreditation. No credit shall be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been denied or revoked by the superintendent or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the superintendent. [13.2.8.9 NMAC;- Rp, 13.2.8.9 NMAC, 7/24/2018]

13.2.8.10 CREDIT FOR REINSURANCE - REINSURER DOMICILED AND LICENSED IN ANOTHER STATE:

A. The superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of any date on which statutory financial statement credit for reinsurance is claimed:

(1) is domiciled and licensed in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Section 59A-7-11 NMSA 1978 and this rule;

(2) maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

(3) files a properly executed *Form AR-1* with the superintendent as evidence of its submission to this state's authority to examine its books and records.

B. The provisions of the section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

[13.2.8.10 NMAC;- Rp, 13.2.8.10 NMAC, 7/24/2018]

13.2.8.11 CREDIT FOR REINSURANCE - REINSURERS MAINTAINING TRUST FUNDS:

A. The superintendent shall allow credit for reinsurance

ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in the form and amount prescribed in the following subsection in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the superintendent substantially the same information as that required to be reported on the *NAIC Annual Statement* form by licensed insurers, to enable the superintendent to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

(1) Trust fund for a single assuming insurer:

(a) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000, except that,

(b) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve:

- (i) an actuarial review, including an independent analysis of reserves and cash flows, and
- (ii)

shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency, but

(iii) the minimum required trusteed surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(2) Trust fund for a group including incorporated and individual unincorporated underwriters.

(a) The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

(i) for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group; and

(ii) for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

(b) In addition to these trusts, the group shall maintain a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

(c) The incorporated members of the group shall not be engaged in any

business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

(d) The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the superintendent:

(i) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) if a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

(3) Trust fund for a group of incorporated insurers – common administration.

(a) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and *Accounting Practices and Procedures Manual* of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:

(i) consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;

(ii) maintain a joint trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(iii) file a properly executed *Form AR-1* with the superintendent as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

(b) Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the superintendent an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C. Form of the trust.
(1) Credit

for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

(2) The trust instrument shall provide that:

(a) contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

(b) legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;

(c) the trust shall be subject to examination as determined by the superintendent;

(d) the trust shall remain in effect for as long as the assuming insurer, or any

member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

(e)

no later than February 28 of each year the trustee of the trust shall report to the superintendent in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

(3)

Inadequate trust fund.

(a)

Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by Subsection B of this section or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b)

The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(c)

If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(d)

The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

D. Allowable trust

assets. Assets deposited in trusts established pursuant to Paragraph (4) of Subsection B of Section 59A-7-11 NMSA 1978 and this section shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a qualified United States financial institution, clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, and investments of the type specified in this subsection. However, investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent of total investments. No more than twenty percent of the total of the investments in the trust may be foreign investments authorized under Subparagraph (e) of Paragraph (1), Paragraph (3), Paragraph (5), and Subparagraph (c) of Paragraph (6) of this subsection, and no more than ten percent of the total of the investments in the trust may be securities denominated in foreign currencies.

For purposes of applying the preceding requirement, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency.

The assets of a trust established to satisfy the requirements of Paragraph (3) of Subsection B of Section 59A-7-11 NMSA 1978 shall be invested only as follows:

(1)

Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(a)

the United States or by any agency or instrumentality of the United States;

(b) a

state of the United States;

(c)

a territory, possession or other governmental unit of the United States;

(d)

an agency or instrumentality of a governmental unit referred to in Subparagraphs (b) and (c) of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under Subparagraph (d) of this paragraph if payable solely out of special assessments on properties benefited by local improvements; or

(e)

the government of any other country that is a member of the OECD and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the SVO;

(2)

Obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution (other than an insurance company) or that are assumed or guaranteed by a solvent United States institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

(a)

are rated A or higher (or the equivalent) by a securities rating agency recognized by the SVO, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(b)

are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the

insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the SVO; or

(c)

have been designated as class one or class two by the SVO;

(3)

Obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the OECD and or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the SVO;

(4) An

investment made pursuant to the provisions of Paragraphs (2), (3) and (4) of this subsection shall be subject to the following additional limitations:

(a)

an investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent of the assets of the trust;

(b)

an investment in any one mortgage-related security shall not exceed five percent of the assets of the trust;

(c)

the aggregate total investment in mortgage-related securities shall not exceed twenty-five percent of the assets of the trust; and

(d)

preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under Subparagraphs (a) and (c) of Paragraph (2) of this subsection, but shall not exceed two percent of the assets of the trust.

(5) **Equity**

interests.

(a)

Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(i)

its obligations and preferred shares, if any, are eligible as investments under

this subsection; and

(ii)

the equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the financial industry regulatory authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

(b)

Investments in common shares of a solvent institution organized under the laws of a country that is a member of the OECD and, if:

(i)

all its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the SVO; and

(ii)

the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the OECD.

(c)

An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent of the assets in the trust.

(6) **Obligations**

issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the SVO.

(7)

Investment companies.

(a)

Securities of an investment company

registered pursuant to the Investment Company Act of 1940, 15 U.S.C. Section 80a, are permissible investments if the investment company:

(i)

invests at least ninety percent of its assets in the types of securities that qualify as an investment under Paragraphs (1), (2) or (3) of this subsection or invests in securities that are determined by the superintendent to be substantively similar to those types of securities; or

(ii)

invests at least ninety percent of its assets in the types of equity interests that qualify as an investment under Subparagraph (a) of Paragraph (5) of this subsection; and

(b)

investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

(i)

an investment in an investment company qualifying under Item (i) of Subparagraph (a) of this paragraph shall not exceed ten percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent of the assets in the trust; and

(ii)

investments in an investment company qualifying under Item (ii) of Subparagraph (a) of this paragraph shall not exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Subparagraph (a) of Paragraph (5) of this subsection.

(8) **Letters of**

Credit.

(a)

In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the superintendent), to immediately draw down the full amount of the letter of credit and

hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(b)

The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

E. A specific security provided to a ceding insurer by an assuming insurer pursuant to 13.2.8.13 NMAC shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

[13.2.8.11 NMAC;- Rp, 13.2.8.11 NMAC, 7/24/2018]

13.2.8.12 CREDIT FOR REINSURANCE – CERTIFIED REINSURERS:

A. Pursuant to Paragraph (5) of Subsection B of Section 59A-7-11 NMSA 1978, the superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the superintendent. The security shall be in a form consistent with the provisions of Paragraph (5) of Subsection B of Section 59A-7-11 NMSA 1978, Subsection C of Section 59A-7-11 NMSA 1978 and 13.2.8.15 NMAC, 13.2.8.22 NMAC and 13.2.8.23 NMAC, or 13.2.8.24 NMAC. The amount of security required in order for full credit to be

allowed shall correspond with the following requirements:

(1)

Security Required	Ratings
Secure - 1	zero
percent	
Secure - 2	ten percent
Secure - 3	twenty
percent	
Secure - 4	fifty
percent	
Secure - 5	seventy-
five percent	
Vulnerable - 6	one
hundred percent	

(2)

Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(3)

The superintendent shall require the certified reinsurer to post one hundred percent for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(4)

In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the superintendent. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

(a)

Line 1: Fire.

(b)

Line 2: Allied lines.

(c)

Line 3: Farmowners multiple peril.

(d)

Line 4: Homeowners multiple peril.

(e)

Line 5: Commercial multiple peril.

(f)

Line 9: Inland marine.

(g)

Line 12: Earthquake.

(h)

Line 21: Auto physical damage.

(5)

Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(6)

Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

B. Certification

Procedure.

(1)

The superintendent shall post notice on the OSI website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The superintendent may not take final action on the application until at least 30 days after posting the notice required by this paragraph.

(2)

The superintendent shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section. The superintendent shall publish a list of all certified reinsurers and their ratings.

(3)

In order to be eligible for certification, the assuming insurer shall meet the

following requirements:

(a)

The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the superintendent pursuant to Subsection C of this section.

(b)

The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with Subparagraph (h) of Paragraph (4) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000.

(c)

The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the superintendent. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the superintendent in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(i)

Standard & Poor's;

(ii)

Moody's investors service;

(iii)

Fitch ratings;

(iv)

A.M. Best company; or

(v)

any other nationally recognized statistical rating organization.

(d)

The certified reinsurer must comply with any other requirements reasonably imposed by the superintendent.

(4) Each

certified reinsurer shall be rated on a legal entity basis, with due

consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(a)

The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The superintendent shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Continued on the following page

Ratings	Best	S&P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable-6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(b) the business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(c) for certified reinsurers domiciled in the United States, a review of the most recent applicable *NAIC Annual Statement Blank*, either *Schedule F* (for property/casualty reinsurers) or *Schedule S* (for life and health reinsurers);

(d) for certified reinsurers not domiciled in the United States, a review annually of *Form CR-F* (for property/casualty reinsurers) or *Form CR-S* (for life and health reinsurers), which are provided on the OSI website;

(e) the reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' *Schedule F* reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(f) regulatory actions against the certified reinsurer;

(g) the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Subparagraph (h) of this paragraph;

(h) for certified reinsurers not domiciled in the United States, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the superintendent, audited IFRS statements with reconciliation to United States GAAP basis certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor). Upon the initial application for certification, the superintendent will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;

(i) the liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(j) a certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The superintendent shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(k) any other information deemed relevant by the superintendent.

(5) Based on the analysis conducted under Subparagraph (e) of Paragraph (4) of this subsection of a certified reinsurer's reputation for prompt payment of claims, the superintendent may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the superintendent shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under Subparagraph (a) of Paragraph (4) of this subsection if the superintendent finds that:

(a) more than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed \$100,000 for each cedent; or

(b) the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds \$50,000,000.

(6) The assuming insurer must submit a properly executed *Form CR-1*, which is provided on the OSI website, as evidence of its submission to the jurisdiction of this state, appointment of the superintendent as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United

States judgment. The superintendent shall not certify any assuming insurer that is domiciled in a jurisdiction that the superintendent has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(7) The certified reinsurer must agree to meet applicable information filing requirements as determined by the superintendent, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under the New Mexico Inspection of Public Records Act and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

(a) notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

(b) annually, *Form CR-F* or *Form CR-S*, as applicable, based on instructions on the OSI website;

(c) annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Subparagraph (d) of this paragraph;

(d) annually, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the superintendent, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor).

Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;

(e) at least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

(f) a certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(g) any other information that the superintendent may reasonably require.

(8) Change in Rating or Revocation of Certification.

(a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the superintendent shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of Subparagraph (a) of Paragraph (4) of this subsection.

(b) The superintendent shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the superintendent to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(c) If the rating of a certified reinsurer is upgraded by the superintendent, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the superintendent shall require the certified reinsurer to post security under the previously applicable security requirements as to

all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the superintendent, the superintendent shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(d) Upon revocation of the certification of a certified reinsurer by the superintendent, the assuming insurer shall be required to post security in accordance with 13.2.8.14 NMAC in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with 13.2.8.11 NMAC, the superintendent may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the superintendent to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

(1) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the superintendent determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the superintendent shall publish notice and evidence of such recognition in an appropriate manner. The superintendent may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(2) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be

recognized as a qualified jurisdiction, the superintendent shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The superintendent shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the superintendent as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the superintendent with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the superintendent, include but are not limited to the following:

- (a) the framework under which the assuming insurer is regulated;
- (b) the structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;
- (c) the substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;
- (d) the form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used;
- (e) the domiciliary regulator's willingness to cooperate with United States regulators in general and the superintendent in particular;
- (f) the history of performance by assuming insurers in the domiciliary jurisdiction.
- (g) any documented evidence of substantial problems with the

enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the superintendent has determined that it does not adequately and promptly enforce final United States judgments arbitration award;

- (h) any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the international association of insurance supervisors or successor organization; and
- (i) any other matters deemed relevant by the superintendent.

(3) A list of qualified jurisdictions shall be published through the committee process. The superintendent shall consider this list in determining qualified jurisdictions. If the superintendent approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the superintendent shall provide thoroughly documented justification with respect to the criteria provided under Subparagraphs (a) through (i) of Paragraph (2) of this subsection.

(4) United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

(1) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the superintendent has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed *Form CR-1* and such additional information as the superintendent requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

(2) Any change in the certified reinsurer's status or rating in the other

jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the superintendent of any change in its status or rating within ten days after receiving notice of the change.

(3) The superintendent may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Paragraph (8) of Subsection B of this section.

(4) The superintendent may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the superintendent suspends or revokes the certified reinsurer's certification in accordance with Paragraph (8) of Subsection B of this section, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

E. Mandatory Funding Clause. In addition to the clauses required under 13.2.8.25 NMAC, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The superintendent shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

[13.2.8.12 NMAC;- Rp, 13.2.8.12 NMAC, 7/24/2018]

13.2.8.13 CREDIT FOR REINSURANCE REQUIRED BY LAW: Pursuant to Paragraph (6) of Subsection B of 59A-7-11 NMSA 1978, the superintendent shall allow credit for reinsurance ceded

by a domestic insurer to an assuming insurer not meeting the requirements of Paragraphs (1), (2), (3) (4) or (5) of Subsection B of 59A-7-11 NMSA 1978 but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district or territory of the United States and any lawful national government.
[13.2.8.13 NMAC;- Rp, 13.2.8.13 NMAC, 7/24/2018]

13.2.8.14 ASSET OR REDUCTION FROM LIABILITY FOR REINSURANCE CEDED TO AN UNAUTHORIZED ASSUMING INSURER NOT MEETING THE REQUIREMENTS OF SECTIONS 13.2.8.8 THROUGH 13.2.13 NMAC:

A. Pursuant to Subsection C of 59A-7-11 NMSA 1978, the superintendent shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Subsection B of 59A-7-11 NMSA 1978 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in Paragraph (2) of Subsection D of 59A-7-11 NMSA 1978. This security may be in the form of any of the following:

- (1) cash;
- (2) securities

listed by the SVO, including those deemed exempt from filing as defined by the *Purposes and Procedures*

Manual of the SVO and qualifying as admitted assets;

(3) clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(4) any other form of security acceptable to the superintendent.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of 13.2.8.25 NMAC and the applicable portions of 13.2.8.15 NMAC through 13.2.8.24 NMAC have been satisfied.

[13.2.8.14 NMAC;- Rp, 13.2.8.14 NMAC, 7/24/2018]

13.2.8.15 REQUIRED CONDITIONS FOR TRUST AGREEMENTS QUALIFIED UNDER 13.2.8.14 NMAC:

A. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution.

B. The trust agreement shall create a trust account into which assets shall be deposited.

C. All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

D. The trust agreement shall provide that:

(1) the beneficiary shall have the right to

withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(2) no other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(3) it is not subject to any conditions or qualifications outside of the trust agreement; and

(4) it shall not contain references to any other agreements or documents except as provided for under Subsections K and L of this section.

E. The trust agreement shall be established for the sole benefit of the beneficiary.

F. The trust agreement shall require the trustee to:

(1) receive assets and hold all assets in a safe place;

(2) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(3) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(4) notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;

(5) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(6) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the

beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

G. The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

H. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

I. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the superintendent), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

J. The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith. The failure of the trustee will to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence or willful misconduct.

K. Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer

or the assuming insurer, for the following purposes:

(1) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(2) to make payment to the assuming insurer of any amounts held in the trust account that exceed one-hundred two percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(3) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Paragraphs (1) and (2) of this subsection as may remain executory after such withdrawal and for any period after the termination date.

L. Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of 13.2.8.14 NMAC in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(1) To pay or

reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement of:

(a) premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellation of policies; and

(b) surrenders and benefits of losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(2) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(3) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in Paragraphs (1) and (2) of this subsection as may remain executory after withdrawal and for any period after the termination date.

M. The reinsurance agreement may, but need not, contain the provisions required by Subsection B of 13.2.8.17 NMAC, so long as these required conditions are included in the trust agreement.

N. Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings

under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy claims of the United States beneficiaries of the trust, the assets or any part of them shall be returned to the trustee for distribution in accordance with the trust agreement.

O. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the insurance code or any combination of the above, provided investments permitted by the insurance code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments. The agreement may further specify the types of investment to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this subsection must be included in the reinsurance agreement.

[13.2.8.15 NMAC;- Rp, 13.2.8.15 NMAC, 7/24/2018]

13.2.8.16 PERMITTED CONDITIONS FOR TRUST AGREEMENTS QUALIFIED UNDER 13.2.8.14 NMAC:

A. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

B. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

C. The trustee may be given authority to invest and accept substitutions of any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in Subsection B of 13.2.8.17 NMAC.

D. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

E. The trust agreement may provide that upon termination of the trust account all

assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.
[13.2.8.16 NMAC;- Rp, 13.2.8.16 NMAC, 7/24/2018]

13.2.8.17 ADDITIONAL CONDITIONS APPLICABLE TO REINSURANCE AGREEMENTS FOR TRUST AGREEMENTS QUALIFIED UNDER 13.2.8.14

NMAC: A reinsurance agreement may contain provisions that:

A. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and that specify what the agreement is to cover;

B. Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this subsection in lieu of including such provisions in the reinsurance agreement;

C. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these

assets without consent or signature from the assuming insurer or any other entity;

D. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

E. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account established pursuant to the provisions of the reinsurance agreement may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(1) To pay or reimburse the ceding insurer for:

(a) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(b) the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(c) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; and

(2) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

[13.2.8.17 NMAC;- Rp, 13.2.8.17 NMAC, 7/24/2018]

13.2.8.18 PERMITTED REINSURANCE AGREEMENT PROVISIONS APPLICABLE TO REINSURANCE AGREEMENTS QUALIFIED UNDER 13.2.8.14

NMAC: The reinsurance agreement may also contain provisions that:

A. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided that:

(1) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(2) after withdrawal and transfer, the current fair market value of the trust account is no less than one-hundred two percent of the required amount.

B. Provide for the return of any amount withdrawn in excess of the actual amounts required for Subsection E of 13.2.8.17 NMAC and for interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to Subsection E of 13.2.8.17 NMAC.

C. Permit the award by any arbitration panel or court of competent jurisdiction of:

(1) interest at a rate different from that provided in Subsection B of this section;

(2) court of arbitration costs;

(3) attorney's fees; and

(4) any other reasonable expenses.

[13.2.8.18 NMAC;- Rp, 13.2.8.18 NMAC, 7/24/2018]

13.2.8.19 FINANCIAL REPORTING APPLICABLE TO REINSURANCE AGREEMENTS QUALIFIED UNDER 13.2.8.14

NMAC: A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the superintendent in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure. [13.2.8.19 NMAC;- Rp, 13.2.8.19 NMAC, 7/24/2018]

13.2.8.20 EXISTING AGREEMENTS APPLICABLE TO REINSURANCE AGREEMENTS QUALIFIED UNDER 13.2.8.14

NMAC: Any trust agreement or underlying reinsurance agreement in existence prior to June 1, 1997 and in compliance with Section 59A-7-11 NMSA 1978 will continue to be acceptable until June 30, 1998 after which time the agreements will have to fully comply with this rule for the trust agreement to be acceptable. [13.2.8.20 NMAC;- Rp, 13.2.8.20 NMAC, 7/24/2018]

13.2.8.21 FAILURE TO IDENTIFY BENEFICIARY APPLICABLE TO REINSURANCE AGREEMENTS QUALIFIED UNDER 13.2.8.14

NMAC: The failure of any trust agreement to specifically identify the beneficiary as defined in Paragraph (2) of Subsection B of 13.2.8.7 NMAC shall not be construed to affect any actions or rights which the superintendent may take or possess pursuant to the laws of this state. [13.2.8.21 NMAC;- Rp, 13.2.8.21 NMAC, 7/24/2018]

13.2.8.22 LETTERS OF CREDIT APPLICABLE TO

REINSURANCE AGREEMENTS FOR TRUST AGREEMENTS QUALIFIED UNDER 13.2.8.14 NMAC:

A. The letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in Subsection A of 13.2.8.23 NMAC.

B. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

C. The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

D. The term of the letter of credit shall be for at least one year and shall contain an “evergreen clause” which prevents the expiration of the letter of credit without due notice from the issuer. The “evergreen clause” shall provide for a period of no less than 30 days notice prior to expiration date or nonrenewal.

E. The letter of credit shall state whether it is subject to and governed by the laws of this state or the *Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600* (UCP 600) or *International Standby Practices of the International Chamber of Commerce*

Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

F. If the letter of credit is made subject to the *UCP 600* or *ISP98*, or any successor publication, then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of *UCP 600* or any other successor publication occur.

G. The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit.

H. If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution, then the following additional requirements shall be met:

(1) the issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and

(2) the “evergreen clause” shall provide for 30 days notice prior to expiration date for nonrenewal.

[13.2.8.22 NMAC;- Rp, 13.2.8.22 NMAC, 7/24/2018]

13.2.8.23 REINSURANCE AGREEMENT PROVISIONS FOR LETTERS OF CREDIT QUALIFIED UNDER 13.2.8.14 NMAC:

A. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:

(1) require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

(2) stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer

pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(a) to pay or reimburse the ceding insurer for:

(i) the assuming insurer’s share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(ii) the assuming insurer’s share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(iii) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(b) where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer’s entire obligations under the specific reinsurance remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer’s share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subparagraph (a) of this paragraph may remain after withdrawal and for any period after the termination date; and

(3) all of the provisions of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

B. Nothing contained in Subsection A of this section shall preclude the ceding insurer and assuming insurer from providing for:

(1) an interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Paragraph (2) of Subsection A of this section; or

(2) the return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

[13.2.8.23 NMAC;- Rp, 13.2.8.23 NMAC, 7/24/2018]

13.2.8.24 OTHER

SECURITY: A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

[13.2.8.24 NMAC;- Rp, 13.2.8.24 NMAC, 7/24/2018]

13.2.8.25 REINSURANCE

CONTRACT: Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of 13.2.8.8 NMAC through 13.2.8.13 NMAC and 13.2.8.14 NMAC or otherwise in compliance with Section 59A-7-11 NMSA 1978 after the adoption of this rule unless the reinsurance agreement:

A. includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant Section 59A-7-11 NMSA 1978;

B. includes a provision pursuant to Subsection B of Section 59A-7-11 NMSA 1978 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative

dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel; and

C. includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

[13.2.8.25 NMAC;- Rp, 13.2.8.25 NMAC, 7/24/2018]

13.2.8.26 CONTRACTS

AFFECTED: All new and renewal reinsurance transactions entered into after June 1, 1997 shall conform to the requirements of Section 59A-7-11 NMSA 1978 and this rule if credit is to be given to the ceding insurer for such reinsurance.

[13.2.8.26 NMAC;- Rp, 13.2.8.26 NMAC, 7/24/2018]

13.2.8.27 SEVERABILITY:

If any provision of this rule, or the application of the provision to any person or circumstance, is held invalid, the remainder of the rule, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

[13.2.8.27 NMAC;- Rp, 13.2.8.27 NMAC, 7/24/2018]

HISTORY OF 13.2.8 NMAC:

13.2.8 NMAC - Credit For Reinsurance, filed 7/1/1997; Recompiled 11/30/2001 was repealed and replaced by 13.2.8 NMAC - Credit For Reinsurance, effective 7/24/2018.

SUPERINTENDENT OF INSURANCE, OFFICE OF

TITLE 13 INSURANCE CHAPTER 18 CREDIT INSURANCE PART 3 CREDITOR- PLACED INSURANCE

13.18.3.1 ISSUING

AGENCY: New Mexico Office of Superintendent of Insurance, P.O. Box 1689, Santa Fe, NM 87504-1689.
[13.18.3.1 NMAC – Rp, 13.18.3.1 NMAC, 7/24/2018]

13.18.3.2 SCOPE:

A. This rule applies to any person transacting creditor-placed insurance on property located in New Mexico.

B. This rule does not apply to:

(1) creditor-placed insurance first issued on property located in another state but subsequently moved to this state;

(2) insurance for which no specific charge is made to the debtor or the debtor's account; or

(3) blanket insurance, whether paid for by the debtor or the creditor.

[13.18.3.2 NMAC – Rp, 13.18.3.2 NMAC, 7/24/2018]

13.18.3.3 STATUTORY

AUTHORITY: Sections 59A-2-9, 59A-12-10, 59A-16-14, 59A-16-18, 59A-17-6, 59A-17-16, 59A-17-28 and 59A-18-12 NMSA 1978.

[13.18.3.3 NMAC – Rp, 13.18.3.3 NMAC, 7/24/2018]

13.18.3.4 DURATION:

Permanent.

[13.18.3.4 NMAC – Rp, 13.18.3.4 NMAC, 7/24/2018]

13.18.3.5 EFFECTIVE

DATE: July 24, 2018, unless a later date is cited at the end of a section or paragraph.

[13.18.3.5 NMAC – Rp, 13.18.3.5 NMAC, 7/24/2018]

13.18.3.6 OBJECTIVE:

The purpose of this rule is to establish guidelines within which creditor-placed insurance may be written in this state, to regulate rates, and to prohibit unfair practices in the transaction of creditor-placed insurance.

[13.18.3.6 NMAC – Rp, 13.18.3.6 NMAC, 7/24/2018]

13.18.3.7 DEFINITIONS:

As used in this rule:

- A. "Actual cash value"** means the cost of replacing damaged or destroyed property with comparable new property, minus depreciation and obsolescence.
- B. "Assigned risk plan"** means the insurance plan established pursuant to the Motor Vehicle Assigned Risks Law, Sections 59A-32-1 et. seq NMSA 1978;
- C. "Blanket insurance"** means a policy of insurance issued to a creditor that covers direct accidental damage to collateral without listing the specific items of collateral covered;
- D. "Collateral"** means property that is pledged as security for the satisfaction of a debt;
- E. "Credit agreement"** means the written document that sets forth the terms of the credit transaction and includes the security agreement;
- F. "Credit property insurance"** means property insurance written in connection with credit transactions under which the creditor is the primary beneficiary;
- G. "Credit transaction"** means a transaction by the terms of which the repayment of money loaned or credit commitment made, or payment for goods, services, or properties sold or leased, is to be made at a future date;
- H. "Creditor"** means a lender of money or vendor or lessor of goods, services, property, rights or privileges for which payment is arranged through a credit transaction, or any successor to the right, title or interest of a lender, vendor or lessor, and includes affiliates, subsidiaries, agents, employees, and representatives of the creditor;
- I. "Creditor-placed insurance"** means insurance that is purchased unilaterally by the creditor, who is the named insured, subsequent to the date of the credit transaction, providing coverage against direct loss or damage to collateralized property. It is purchased according to the terms of the credit agreement as a result of the debtor's failure to provide

required physical damage insurance, with the cost of the coverage being charged to the debtor;

J. "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction;

K. "FAIR plan" means the insurance plan established pursuant to the FAIR Plan Act, Sections 59A-29-1 et. seq NMSA 1978;

L. "Insurance tracking" means activities undertaken by a person other than a creditor to monitor evidence of insurance on collateralized credit transactions to determine whether insurance required by the credit agreement has lapsed and to communicate with debtors concerning the status of insurance coverage;

M. "Lapse" means that the insurance coverage required by the credit agreement is not in force;

N. "Limited dual interest insurance" means insurance purchased by the creditor to insure its interest in the collateral that does not contain the three conditions for loss payment required for single interest insurance and extends coverage on the collateral while it is in the possession of the debtor;

O. "Loss ratio" means incurred losses divided by earned premiums;

P. "Motor vehicles" means those vehicles subject to the Mandatory Financial Responsibility Act, Sections 66-5-201 et. seq NMSA 1978;

Q. "Net debt" means the amount necessary to liquidate the remaining debt in a single lump-sum payment, excluding all unearned interest and other unearned charges;

R. "Personal property" means all tangible property other than real property and includes motor vehicles, mobile homes and manufactured housing;

S. "Single interest insurance" means insurance purchased by the creditor to insure its interest in the collateral securing

a debtor's credit transaction which requires that three conditions be met for payment of loss under the policy:

(1) the debtor has defaulted in payment on the credit transaction;

(2) the creditor has legally repossessed the collateral, unless collateral has been stolen from the debtor; and

(3) the creditor has suffered an impairment of interest.

T. "Skip, confiscation and conversion coverage" means coverage protecting the creditor from fraud, theft, larceny, conversion, embezzlement or secretion on the part of the debtor.

[13.18.3.7 NMAC – Rp, 13.18.3.7 NMAC, 7/24/2018]

13.18.3.8 LIMITED AUTHORIZATION TO TRANSACT:

A. An insurer shall not issue creditor-placed insurance to a creditor unless the creditor has an insurable interest in the collateral.

B. No insurer shall transact creditor-placed insurance without first having obtained from the superintendent a license to transact general casualty insurance or vehicle insurance in the case of motor vehicles or property insurance in the case of all other kinds of property.

C. Creditor-placed insurance shall be either single interest insurance or limited dual interest insurance.

D. Creditor-placed insurance shall not be transacted as inland marine insurance.

[13.18.3.8 NMAC – Rp, 13.18.3.8 NMAC, 7/24/2018]

13.18.3.9 POLICY TERM:

A. Effective date: Creditor-placed insurance shall become effective on the latest of the following dates:

(1) the date of the credit transaction;

(2) the date prior coverage, including prior creditor-placed insurance coverage, lapsed;

(3) for

personal property, one year before the date on which the charge for creditor-placed insurance is made to the debtor's account; or

(4) a later date provided for in the agreement between the creditor and insurer.

B. Termination

date: Creditor-placed insurance shall terminate on the earliest of the following dates:

(1) the date other acceptable insurance becomes effective, subject to the debtor providing acceptable evidence of the other insurance to the creditor;

(2) the date the collateralized property is repossessed, unless the property is returned to the debtor within 10 days of the repossession;

(3) the date the collateralized property is damaged beyond repair;

(4) the date the debt is completely extinguished; or

(5) an earlier date specified in the individual policy or certificate of insurance.

C. Policy term: The term of a creditor-placed insurance certificate shall not exceed 12 months. [13.18.3.9 NMAC – Rp, 13.18.3.9 NMAC, 7/24/2018]

13.18.3.10 CALCULATION OF PREMIUMS: This section is not intended to limit the amount of coverage.

A. For credit transactions collateralized by property that does not include land, the premium for creditor-placed insurance shall be calculated on the net debt, even though the coverage may limit the insurer's liability to the least of the net debt, actual cash value or cost of repair.

B. When calculating premiums for creditor-placed insurance on credit transactions collateralized by property that includes land, the exposure base shall not include the value of the land. For this purpose, the value of the land shall be its appraised value as determined by a licensed appraiser or the value assigned by the appropriate

taxing authority.

C. Other premium calculation methods that more closely reflect the exposure of each insured item may be employed with the approval of the superintendent. [13.18.3.10 NMAC – Rp, 13.18.3.10 NMAC, 7/24/2018]

13.18.3.11 PROHIBITED COVERAGES:

Nothing in this section shall be construed to prohibit the issuance of a separate policy providing the coverages listed below to the creditor. Creditor-placed insurance may not include:

A. coverage for the cost of repossession or the cost of storing repossessed collateral;

B. skip, confiscation and conversion coverage;

C. coverage that pays the credit transaction deficiency or insurance premium deficiency;

D. coverage for payment of mechanics' or other liens that do not arise from a covered loss or occurrence;

E. coverage that indemnifies creditors for losses caused by their failure to record instruments which provide evidence of collateral security;

F. for motor vehicles, coverage other than collision and comprehensive; or

G. for mobile homes, coverage that is broader than a basic fire and extended coverage policy such as ISO Form DP001 06 96.

[13.18.3.11 NMAC – Rp, 13.18.3.11 NMAC, 7/24/2018]

13.18.3.12 EVIDENCE OF COVERAGE:

Creditor-placed insurance shall be set forth in an individual policy or certificate of insurance. A copy of the individual policy, certificate of insurance coverage, or other evidence of insurance coverage shall be mailed, first class mail, or delivered in person to the last known address of the debtor.

[13.18.3.12 NMAC – Rp, 13.18.3.12 NMAC, 7/24/2018]

13.18.3.13 FILING AND

APPROVAL OF FORMS AND RATES:

A. All policy forms and certificates of insurance to be delivered or issued for delivery in this state, and the schedules of premium rates pertaining to them, shall, pursuant to Sections 59A-17-9 and 59A-18-12 NMSA 1978, be filed with and approved by the superintendent prior to use in this state.

B. Policy forms applicable to creditor-placed insurance for motor vehicles shall not require deductibles lower than one hundred dollars (\$100).

C. Policy forms applicable to creditor-placed insurance for mobile homes, manufactured housing and real property shall not require deductibles lower than two hundred fifty dollars (\$250).

D. For each type of collateral, insurers shall file a schedule of premium rates that is not unreasonable in relation to the benefits provided by the form to which the schedule applies. Types of collateral include, but are not limited to, real property, motor vehicles, mobile homes, and other personal property. A premium rate or schedule of premium rates that produces or may reasonably be expected to produce a loss ratio of less than fifty percent shall be presumed to be unreasonable in relation to the benefits provided.

E. Nothing in this section shall prohibit the superintendent from approving other loss ratios that may be found reasonable. An insurer may file a rate that produces or may reasonably be expected to produce a loss ratio of less than fifty percent provided that the provision in the rate for commissions, acquisition costs, insurance tracking, expense reimbursement to creditors, and all similar expenses incurred directly or indirectly does not exceed thirty percent.

[13.18.3.13 NMAC – Rp, 13.18.3.13 NMAC, 7/24/2018]

13.18.3.14 REFUND OF

UNEARNED PREMIUMS:

A. Within 60 calendar days after the termination of creditor-placed insurance coverage, an insurer shall refund any unearned premium or other identifiable charges for creditor-placed insurance on a daily pro rata basis, subject to a minimum premium charge filed with and approved by the superintendent.

B. Within 60 calendar days after the termination date of creditor-placed insurance coverage, the insurer shall provide to the debtor a statement of refund disclosing the effective date, the termination date, the amount of premium being refunded and the amount of premium charged for the coverage provided. No statement shall be required in the event that the policy terminates pursuant to Paragraph (4) of Subsection B of 13.18.3.9 NMAC.

C. The entire amount of premiums, minimum premiums, fees or charges of any kind shall be refunded if no coverage was provided. [13.18.3.14 NMAC – Rp, 13.18.3.14 NMAC, 7/24/2018]

13.18.3.15 CLAIMS:

A. Insurers shall promptly investigate and settle claims in accordance with Section 59A-16-20 NMSA 1978, Unfair Claim Settlement Practices.

B. The settlement value on creditor-placed insurance covering personal property shall be the least of the following, determined as of the date of the loss, less any applicable deductible, retained salvage, or compensation received from a third party:

- (1) the actual cash value of the collateral;
- (2) the cost of repairing or replacing the collateral to its pre-loss condition; or
- (3) the net debt.

C. Whenever a claim is made on a creditor-placed insurance policy, the insurer shall furnish to the debtor and creditor a written statement of the loss explaining the settlement amount and the method of settlement.

D. Insurers shall not deny a claim made on a creditor-placed insurance policy on the grounds that the collateral is ineligible for coverage if the insurer has first accepted a premium on the collateral. This section does not apply in those cases where coverage is denied because of fraud or subrogation or when other insurance was in effect. [13.18.3.15 NMAC – Rp, 13.18.3.15 NMAC, 7/24/2018]

13.18.3.16 REBATES

PROHIBITED: No insurer shall offer, and no creditor shall accept, a rebate or inducement. This section does not prohibit or restrict an insurer that provides creditor-placed insurance for a creditor from doing business with that creditor if the business is conducted in accordance with the same terms and conditions and at the regular and customary interest rates and charges the creditor applies to its other customers.

A. An insurer shall not pay directly or indirectly to a creditor commissions, fees, rent, expense reimbursement, or other compensation greater than thirty percent of earned premium net of terminations.

B. An insurer shall not pay to a creditor a policyholder dividend, retrospective premium adjustment, profit sharing, or similar return of premium.

C. An insurer transacting creditor-placed insurance shall not provide other insurance coverages to a creditor at inadequate rates.

D. An insurer shall not pay a commission to a person who is not a duly licensed and appointed agent of the insurer.

E. An insurer shall not purchase or offer to purchase certificates of deposit from a creditor or maintain or offer to maintain accounts with a creditor in connection with a creditor-placed insurance solicitation.

F. An insurer shall not purchase certificates of deposit from a creditor or maintain accounts with a creditor at less than market interest rates.

G. An insurer shall not pay for damages that occurred outside the period of coverage or for other losses not covered under the policy.

H. An insurer shall not require a creditor to purchase insurance tracking or any other services from a specific person but may require that such services meet minimum quality standards.

I. A creditor shall not knowingly recover for damages that occurred outside the period of coverage or for other losses not covered under the policy.

J. A creditor shall credit a debtor's account for the amount of any refunded premium upon cancellation of creditor-placed insurance if the creditor has debited the debtor's account for the amount of the premium. [13.18.3.16 NMAC – Rp, 13.18.3.16 NMAC, 7/24/2018]

13.18.3.17 NOTICE OF CREDITOR-PLACED

INSURANCE: An insurer shall, within 15 days of the initial placement or renewal of creditor-placed insurance, either directly or through the creditor, using the form prescribed in 13.18.3.20 NMAC or a substantially similar form mail to the debtor by first-class mail a copy of the certificate of insurance or policy. In the case of limited dual-interest insurance, the insurer shall also explain the debtor's rights to file a claim for damages incurred after the effective date of the coverage. [13.18.3.17 NMAC – Rp, 13.18.3.17 NMAC, 7/24/2018]

13.18.3.18 REPORTING REQUIREMENTS:

A. Required reports. On or before July 1 of each year, every insurer offering creditor-placed insurance policies in New Mexico shall file the following reports covering the prior calendar year:

- (1) Form A, summary experience report, on the form provided on the OSI website;
- (2) Form B, creditor's experience report, on the form provided on the OSI website;

(3) Form C, other insurance report, on the on the form provided on the OSI website;

(4) Form D, reconciliation report, on the form provided on the OSI website, explaining the basis of data compilation, data peculiarities and reconciling any material differences between Form A, Form B, and the annual statement it files.

B. Affidavit: A responsible officer of the insurer shall submit the affidavit prescribed by the superintendent in 13.18.2.20 NMAC when filing the reports required by this section.

C. Electronic filing: Reports shall be submitted both in writing and in EXCEL or other format approved by the superintendent. Instructions for filing are provided with the forms on the OSI website. [13.18.3.18 NMAC – Rp, 13.18.3.18 NMAC, 7/24/2018]

13.18.3.19 NOTICE OF CREDITOR-PLACED INSURANCE FROM INSURER:

NOTICE OF CREDITOR-PLACED INSURANCE

You are required to maintain insurance on the property that is the collateral for your debt. You have not provided proof of insurance in response to the notices previously sent you. Therefore, [insert name of creditor] has placed insurance coverage for you in accordance with the terms of your credit agreement. A copy of that policy/certificate is attached. It states the total cost to you of the insurance and the period of time the insurance will be in force. You may purchase other insurance coverage at any time; as soon as you provide proof of other coverage to [insert name of creditor], we will cancel this creditor-placed coverage and refund to you any unearned premiums that you have paid. If you have had difficulty obtaining insurance, you may be eligible to purchase:

- New Mexico Assigned Risk Plan coverage for motor vehicles from

your local agent or from the New Mexico Assigned Risk Plan at 1-800-227-4659;

- FAIR Plan coverage for real property or mobile homes from your local agent or from the New Mexico Property Insurance Program at 505-878-9563 or 2201 San Pedro NE, Building 20, Albuquerque, New Mexico 87110.

The insurance placed by [insert name of creditor] will pay claims for covered physical damage to the property until the debt is paid. The insurance placed by [insert name of creditor] will not give you any liability insurance coverage and will not meet the requirements of the New Mexico Mandatory Financial Responsibility Law.

[For limited dual interest policies] As the debtor, you have the right to file a claim for damage incurred on or after the effective date of coverage stated in the policy/certificate. This insurance will pay no more than the unpaid balance on the loan, which may be less than the value of the property. In order to file a claim, you must:

[insert instructions for filing a claim] [13.18.3.19 NMAC – Rp, 13.18.3.20 NMAC, 7/24/2018]

13.18.3.20 AFFIDAVIT:

NEW MEXICO CREDITOR-PLACED INSURANCE EXPERIENCE REPORTS FOR THE CALENDAR YEAR ENDING DECEMBER 31, _____

AFFIDAVIT STATE OF _____

COUNTY OF _____

I, _____, the (position) _____ of (name of Company) _____, being duly sworn, deposes and says that on the 31st day of December last,

all of the income and expenses of the named company described in Form A, Form B, Form C, and Form D submitted with this Affidavit, together with any related reports, exhibits, schedules and explanations contained in this filing, or annexed to or referred to in this filing, are a full and true statement in accordance with the instructions provided of income and expenses for the year ended on that date, according to the best of my information, knowledge and belief.

Signature

SUBSCRIBED AND SWORN TO BEFORE ME

this _____ day of _____, _____.

Notary Public

My Commission Expires

[13.18.3.20 NMAC – Rp, 13.18.3.25 NMAC, 7/24/2018]

HISTORY OF 13.18.3 NMAC:

13.18.3 NMAC - Creditor-Placed Insurance, filed 1/1/1999, recomplied 11/30/2001 was repealed and replaced by 13.18.3 NMAC - Creditor-Placed Insurance, effective 7/24/2018.

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an amendment to 13.9.18 NMAC, Sections 1, 7, 8, 9 and 10, effective July 24, 2018.

13.9.18.1 ISSUING AGENCY:

[New Mexico Public Regulation Commission.] Office of Superintendent of Insurance (OSI), Post Office Box 1689, Santa Fe, NM 87504-1689.

[13.9.18.1 NMAC - N, 12/31/2007; A, 7/24/2018]

13.9.18.7 DEFINITIONS: A. "2001 CSO

Mortality Table” means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the [~~American academy of actuaries~~] AAA CSO task force from the *Valuation Basic Mortality Table* developed by the [~~society of actuaries~~] SOA individual life insurance valuation mortality task force, and adopted by the NAIC in December 2002. The *2001 CSO Mortality Table* is included in the *Proceedings of the NAIC*, second quarter 2002, and supplemented by the *2001 CSO Preferred Class Structure Mortality Table* defined in Subsection B of 13.9.18.7 NMAC. Unless the context indicates otherwise, the *2001 CSO Mortality Table* includes both the ultimate form of that table and the select and ultimate form of that table and includes both the *Smoker and Nonsmoker Mortality Tables* and the *Composite Mortality Tables*. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the *2001 CSO Mortality Table* include the following:

(1) **“2001 CSO Mortality Table (F)”** means that mortality table consisting of the rates of mortality for female lives from the *2001 CSO Mortality Table*;

(2) **“2001 CSO Mortality Table (M)”** means that mortality table consisting of the rates of mortality for male lives from the *2001 CSO Mortality Table*;

(3) **“Composite Mortality Tables”** means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers; and

(4) **“Smoker and Nonsmoker Mortality Tables”** means mortality tables with separate rates of mortality for smokers and nonsmokers.

B. “2001 CSO Preferred Class Structure Mortality Table” means mortality tables with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers,

and residual standard smoker splits of the *2001 CSO Nonsmoker and Smoker Tables* as adopted by the at the September, 2006 national meeting and published in the *Proceedings of the NAIC*, third quarter 2006. Unless the context indicates otherwise, the *2001 CSO Preferred Class Structure Mortality Table* includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the *Smoker and Nonsmoker Mortality Tables*. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

C. “AAA” means the American academy of actuaries.

D. “CSO” means commissioners standard ordinary.

E. “NAIC” means the national association of insurance commissioners.

F. “SOA” means the society of actuaries.

G. “Statistical agent” means an entity with proven systems for protecting the confidentiality of individual insured and insurer information, demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

H. “Superintendent” means the superintendent of insurance, the office of superintendent of insurance or employees of the office of superintendent of insurance acting within the scope of the superintendent’s official duties and with the superintendent’s authorization.

[13.9.18.7 NMAC - N, 12/31/2007; A, 7/24/2018]

13.9.18.8 2001 CSO PREFERRED CLASS

STRUCTURE TABLE: At the election of the insurer, for each calendar year of issue, for any one or

more specified plans of insurance and subject to satisfying the conditions stated in this rule, the *2001 CSO Preferred Class Structure Mortality Table* may be substituted in place of the *2001 CSO Smoker or Nonsmoker Mortality Table* as the minimum valuation standard for policies issued on or after January 1, 2007. For policies issued on or after January 1, 2004 and prior to January 1, 2007, these tables may be substituted with the consent of the superintendent and subject to the conditions of 13.9.18.9 NMAC. In determining such consent, the superintendent may rely on the consent of the commissioner of the company’s state of domicile. No such election shall be made until the company demonstrates at least twenty percent of the business to be valued on this table is in one or more of the preferred classes. A table from the *2001 CSO Preferred Class Structure Mortality Table* used in place of a *2001 CSO Mortality Table*, pursuant to the requirements of this rule, will be treated as part of the *2001 CSO Mortality Table* only for purposes of reserve valuation pursuant to the requirements of 13.9.16 NMAC, Use Of 2001 Commissioners Standard Ordinary Mortality Table. [13.9.18.7 NMAC - N, 12/31/2007; A, 7/24/2018]

13.9.18.9 CONDITIONS:

A. For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the *Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker Tables* to substitute for the *Nonsmoker Mortality Table* found in the *2001 CSO Mortality Table* to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the *Residual Standard Nonsmoker Table*, the appointed actuary shall certify that:

(1) the present value of death benefits over the next 10 years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the

valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class; and

(2) the present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

B. For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the *Preferred Smoker* and *Residual Standard Smoker Tables* to substitute for the *Smoker Mortality Table* found in the *2001 CSO Mortality Table* to determine minimum reserves. At the time of election and annually thereafter, for business valued under the *Preferred Smoker Table*, the appointed actuary shall certify that:

(1) the present value of death benefits over the next 10 years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the *Preferred Smoker Valuation Basis Table* corresponding to the valuation table being used for that class; and

(2) the present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the *Preferred Smoker Valuation Basis Table*.

C. Unless exempted by the superintendent, every authorized insurer using the *2001 CSO Preferred Class Structure Table* shall annually file with the superintendent, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the superintendent,

statistical reports showing mortality and such other information as the superintendent may deem necessary or expedient for the administration of the provisions of this rule. The form of the reports shall be established by the superintendent or the superintendent may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the superintendent.

D. The use of the *2001 CSO Preferred Class Structure Table* for the valuation of policies issued prior to January 1, 2007 shall not be permitted in any statutory financial statement in which a company reports, with respect to any policy or portion of a policy coinsured, either of the following:

(1) In cases where the mode of payment of the reinsurance premium is less frequent than the mode of payment of the policy premium, a reserve credit that exceeds, by more than the amount specified in this paragraph as Y, the gross reserve calculated before reinsurance. Y is the amount of the gross reinsurance premium that (a) provides coverage for the period from the next policy premium due date to the earlier of the end of the policy year and the next reinsurance premium due date, and (b) would be refunded to the ceding entity upon the termination of the policy.

(2) In cases where the mode of payment of the reinsurance premium is more frequent than the mode of payment of the policy premium, a reserve credit that is less than the gross reserve, calculated before reinsurance, by an amount that is less than the amount specified in this paragraph as Z. Z is the amount of the gross reinsurance premium that the ceding entity would need to pay the assuming company to provide reinsurance coverage from the period of the next reinsurance premium due date to the next policy premium due date minus any liability established for the proportionate amount not remitted to the reinsurer.

(3) For purposes of this condition, the reserve

(i) for the mean reserve method shall be defined as the mean reserve minus the deferred premium asset, and (ii) for the mid-terminal reserve method shall include the unearned premium reserve. A company may estimate and adjust its accounting on an aggregate basis in order to meet the conditions to use the *2001 CSO Preferred Class Structure Table*.

[13.9.18.9 NMAC - N, 12/31/2007; A, 7/24/2018]

13.9.18.10 SEPARABILITY:

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected.

[13.9.18.10 NMAC - N, 7/24/2018]

**END OF ADOPTED
RULES**

Other Material Related To Administrative Law

**ENVIRONMENT
DEPARTMENT
RESOURCE PROTECTION
DIVISION**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The New Mexico Environment Improvement Board gives Notice of Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Paragraph D of Section 14-4-5 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all published and electronic copies of the above rules:

Deleted superfluous section numbers in first line of **20.5.101.3 NMAC** – **STATUTORY AUTHORITY:** “20.5.1 20.5.101 through 20.5.25 20.5.125 NMAC” and have corrected the reference to be: “20.5.101 through 20.5.125 NMAC”

A copy of this Notification was filed with the official version of the above rule.

**REGULATION AND
LICENSING DEPARTMENT
PSYCHOLOGIST EXAMINERS,
BOARD OF**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The New Mexico Board of Psychologist Examiners gives Notice of Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Paragraph D of Section 14-4-5 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all published and electronic copies

of the above rules:

Re-numbered section **16.22.30.7 NMAC - PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS** to **16.22.30.8 NMAC** and inserted a reserved section for 16.22.30.7 NMAC - DEFINITIONS, consistent with subsection F of 1.24.10.8 NMAC.

A copy of this Notification will be filed with the official version of the above rule.

**END OF OTHER
MATERIAL RELATED
TO ADMINISTRATIVE
LAW**

2018 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXIV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	March 1	March 13
Issue 6	March 15	March 27
Issue 7	March 29	April 10
Issue 8	April 12	April 24
Issue 9	April 26	May 15
Issue 10	May 17	May 29
Issue 11	May 31	June 12
Issue 12	June 14	June 26
Issue 13	June 28	July 10
Issue 14	July 12	July 24
Issue 15	July 26	August 14
Issue 16	August 16	August 28
Issue 17	August 30	September 11
Issue 18	September 13	September 25
Issue 19	September 27	October 16
Issue 20	October 18	October 30
Issue 21	November 1	November 13
Issue 22	November 15	November 27
Issue 23	November 29	December 11
Issue 24	December 13	December 27

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at: <http://www.nmcpr.state.nm.us/nmregister>. For further information, call 505-476-7942.