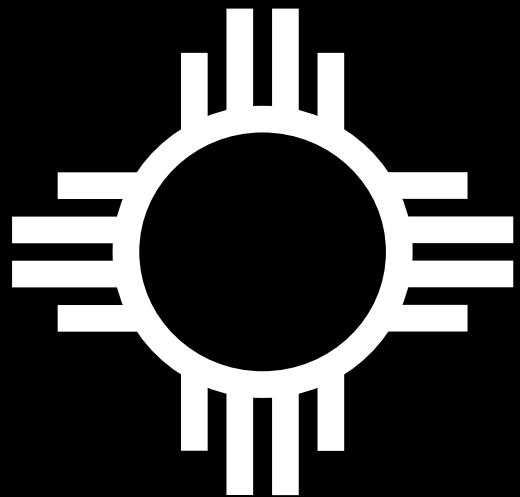


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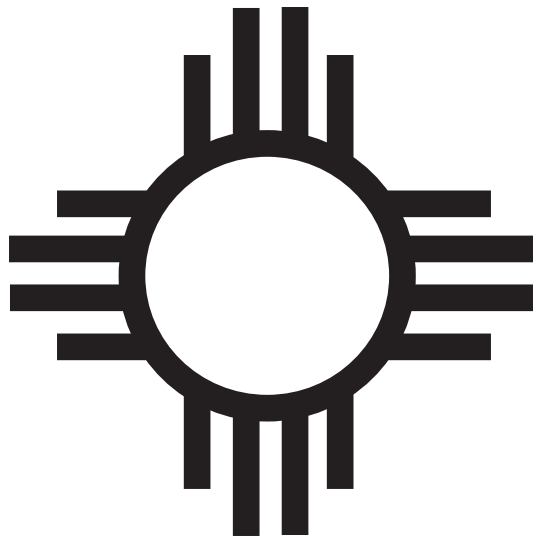


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New Mexico Register

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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2015

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New Mexico Register

Volume XXVI, Issue 10

May 29, 2015

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A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

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Notices of Rulemaking and Proposed Rules

DEPARTMENT OF AGRICULTURE

Public Meeting Notice

A meeting of the Acequia and Community Ditch Fund Committee will be held to determine distribution of the FY2016 Acequia and Community Ditch Fund. The meeting will be held on Wednesday, June 17, 2015, at 9:00 a.m. in Santa Fe, New Mexico, Room 326, State Capitol Building.

Copies of the agenda may be obtained by contacting the New Mexico Department of Agriculture, at (575) 646-2642, or by writing New Mexico Department of Agriculture, Agricultural Programs and Resources, MSC-APR, P O Box 30005, Las Cruces, New Mexico 88003-8005.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact the New Mexico Department of Agriculture at least three (3) days prior to the meeting, at (575) 646-2642. Disabled persons who need documents such as agendas or minutes in accessible form should contact the New Mexico Department of Agriculture.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

NOTICE OF PUBLIC HEARING 8.8.3 NMAC and 8.17.2 NMAC

The Children, Youth and Families Department (CYFD), Early Childhood Services (ECS), will hold a formal public hearing on June 29, 2015, at 11:00 a.m. in Apodaca Hall located at 1120 Paseo de Peralta, Santa Fe, New Mexico, to receive public comments regarding changes to regulations NMAC 8.8.3 Children, Youth and Families General Provisions Governing Background Checks and Employment History Verification and 8.17.2 NMAC Non-Licensed Child Care Requirements Governing Registration of Non-Licensed Family Child Care Homes.

The proposed regulation changes may be obtained at www.newmexicokids.org or by calling 505-827-7499 or 1-800-832-1321. Interested persons may testify at the hearing or submit written comments no

later than 12:00 p.m. on June 29, 2015. Written comments will be provided the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Jeffrey Miles, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-9978. For questions regarding the proposed regulation changes, please call 505-827-7499 or 1-800-832-1321.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please call 505-827-7499 or 1-800-832-1321. ECS requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NOTICIA DE AUDICION PÚBLICA 8.8.3 NMAC and 8.17.2 NMAC

El Departamento de Niños, Juventud y Familias (CYFD), Servicios de Niñez Temprana (ECS), tendrá una audición formal para el público el lunes, 29 de junio de 2015, a las 11:00 de la mañana en el salón Apodaca, localizado en 1120 Paseo de Peralta, Santa Fe, New Mexico, para recibir comentarios públicos con respecto a cambios propuestos a las regulaciones NMAC 8.8.3 provisiones generale que gobiernan de antecedentes penales y verificación de historial de empleo y NMAC 8.17.2 de Sin-Licencias para Guarderías Administración de Registro de Sin-Licencias Casas de Familia Guardería.

Los cambios propuestos de la regulación pueden ser obtenidos en www.newmexicokids.org o por llamar 505-827-7499 o 1-800-832-1321. Las personas interesadas pueden testificar en la audición o someter comentarios escritos hasta las 12:00 de la tarde el día 29 de junio de 2015. Los comentarios escritos serán proporcionados la misma consideración como testimonio oral en la audición. Los comentarios escritos deben ser dirigidos a: Jeffrey Miles, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax #: 505-827-9978. Preguntas con respecto a los cambios propuestos de regulación, por favor llame 505-827-7499 o 1-800-832-1321.

Si usted es una persona con incapacidades y usted requiere esta información en un formato alternativo o requiere alojamientos especiales para tomar parte en la audición pública, por favor llame 505-827-7499 o 1-800-832-1321. CYFD requiere aviso de las peticiones por lo menos 10 días de preaviso para proporcionar formatos solicitados alternativos y alojamientos especiales.

HIGHER EDUCATION DEPARTMENT

Notice of Public Hearing

The Higher Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505-2100, on June 22, 2015, from 8:00 a.m. to 4:00 p.m. The purpose of the public hearing will be to obtain input on the following rules:

- | | |
|--------------------|--|
| 5.5.5 NMAC | Closure of Public Institutions (New Rule) |
| 5.7.7 NMAC | Children Youth and Families Worker Loan Repayment Program (New Rule) |
| 5.7.32 NMAC | Nurse Educator Loan-For-Service Program (Rule Amendment) |

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Mr. David Mathews, Office of General Counsel, Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505-2100 (david.mathews@state.nm.us) (505) 476-8402) (telefax (505) 476-8454).

Written comments must be received no later than 5:00 pm on June 12, 2015 (10 days prior to hearing). However, the submission of written comments as soon as possible is encouraged. Any rule may be removed from the agenda prior to the scheduled hearing.

The proposed rulemaking action may be accessed on the Department's website (<http://hed.state.nm.us/>) or obtained from David Mathews, Office of General Counsel, Higher Education Department,

2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505-2100 (david.mathews@state.nm.us) (505) 476-8402 (telefax (505) 476-8454). The proposed rule will be made available at least twenty (20) days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact the Higher Education Department as soon as possible. The Department requests at least five (5) days advance notice to provide requested special accommodations.

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Human Services Department (HSD) will hold a public hearing to allow comment on the proposed amendment of the Supplemental Nutrition Assistance Program (SNAP) regulations. The hearing will be held on Friday, July 17, 2015 from 1:30 p.m. to 4:00 p.m., at the Department of Health (DOH) Harold Runnels Building Auditorium, 1190 St. Francis Drive, Santa Fe, NM.

The Department is promulgating proposed regulations to the Supplemental Nutrition Assistance Program (SNAP), Employment and Training (E&T) program. The Food and Nutrition Act (the Act) of 2008 states that the purpose of E&T program is to provide SNAP participants opportunities to gain skills, training or experience that will improve their employment prospects and reduce their reliance on SNAP benefits. Within the proposed regulations the Department is reinstating the program requirements that were in effect prior to the American Reinvestment and Recovery Act of 2009.

These changes include:

- Reinstatement of the Able Bodied Adults Without Dependents (ABAWD) work program requirements and time limits in accordance with the Food and Nutrition Act and title 7 of the Code of Federal Regulations, part 273 as of October 1, 2015.
- Alignment of exemptions from

the Employment and Training requirements for Non-ABAWDs with the Federal SNAP regulations in 7 CFR 273.7.

The Department is proposing to align the E&T and TANF regulations for removing disqualifications when an individual has complied within the disqualification period. This proposal will ensure that individuals, who comply within the disqualification time period, will have access to the SNAP benefits earlier, rather than serving out the entire disqualification period.

The Department is also proposing to expand the definition of good cause and define certain circumstances that may preclude the individual from participating in a work activity as well as defining the allowed time period of good cause.

Additionally, the Department is proposing that individuals residing in an area that is determined "rural" area, as defined by the department, will only be required to complete the 12 verifiable employer contacts, within a thirty-day period.

The Department is also proposing to add two additional work activities that non-ABAWDs can participate in to complete their work program requirement.

The Department is also proposing aligning the notice of adverse action time frame in the SNAP regulations with the regulations regarding external communication in the General Provisions regulation at 8.100.180 NMAC. As well as updating "food stamps" to "SNAP".

The Human Services Register Vol. 38 No. 13 outlining the proposed regulations is available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, New Mexico 87504-2348, or by calling 505-827-7250 or 505-827-7268.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-7701 or through the New Mexico Relay system, toll free at #711. The Department requests at

least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 4:00 pm on the date of the hearing, July 17, 2015. Please send comments to:

Human Services Department
P.O. Box 2348, Pollon Plaza
Santa Fe, New Mexico 87504-2348

You may send comments electronically to: HSD-isdrules@state.nm.us

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Human Services Department (the Department) Medical Assistance Division (MAD) is proposing to amend New Mexico Administrative Code (NMAC) rules: 8.281.500 Institutional Care and 8.200.430 General Recipient Policies. The register and amendments to these rules will be available May 30, 2015 on the HSD website: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have internet access, a copy of the proposed register and rules may be requested by contacting MAD at 505-827-7743 or at 888-997-2583 asking for extension 7-7743.

The Department is taking this opportunity to amend the rules to implement the Qualified State Long Term Care Insurance Partnership Program, to define who may be recognized as a spouse, and to update and standardize language.

Highlights:

8.200.430 NMAC Section 19- the proposed amendment now defines surviving spouse and allows for the exclusion of certain resources, property in the estate recovery process, and revises the definition of homestead as it pertains to estate recovery.

8.281.500 NMAC Section 7- the proposed amendment adds definitions for asset limits, long term care insurance policy, protected asset limits, the Qualified

State Long Term Care Partnership Program, and defines who is recognized as a spouse.

8.281.500 NMAC Section

13-the proposed amendment adds detailed instruction to implement the Qualified State Long Term Care Insurance Partnership Program.

8.281.500 NMAC Section 14-

the proposed amendment adds instructions on asset transfers under the Qualified State Long Term Care Insurance Program.

8.281.500 NMAC Section 16-

the proposed amendment adds instruction as to how to determine the resource assessments when an eligible recipient has a policy for the Qualified State Long Term Care Insurance Partnership Program.

8.281.500 NMAC Section 23-

the proposed amendment adds instructions on determining deductions of premiums for the Qualified State Long Term Care Insurance Partnership policies in the medical care credit calculation. The amendment allows a deduction for the full amount of court ordered child or spousal support.

The Department proposes to have 8.200.430 and 8.281.500 NMAC effective August 1, 2015. A public hearing to receive testimony on these proposed amendments will be held in Hearing Room One, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico on June 30, 2015 at 10 a.m. Mountain Daylight Time (MDT).

Interested persons may address written comments to Human Services Department, Office of the Secretary, ATTN: Medical Assistance Division-Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MDT on June 30, 2015. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Medical Assistance Division toll free at 1-888-997-2583 and ask for extension 7-7743. In Santa Fe call 827-7743. The Department's

TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

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

PUBLIC DEFENDER DEPARTMENT

Notice of Public Hearing

The Law Offices of the Public Defender ("Department") hereby gives notice that the Department will offer proposed new rules for public comment beginning May 30, 2015. The purpose of this notice is to obtain input on the following proposed personnel policies and procedures:

- 10.12.1 NMAC - General Provisions
- 10.12.2 NMAC - Appointments
- 10.12.3 NMAC - Classification
- 10.12.4 NMAC - Pay
- 10.12.5 NMAC - Recruitment, Assessment and Selection
- 10.12.6 NMAC - General Working Conditions
- 10.12.7 NMAC - Absence and Leave
- 10.12.8 NMAC - Drug and Alcohol Abuse
- 10.12.9 NMAC - Performance Appraisals
- 10.12.10 NMAC - Furlough, Reduction in Force, Reemployment, Separation without Prejudice
- 10.12.11 NMAC - Discipline
- 10.12.12 NMAC - Adjudication
- 10.12.13 NMAC - Rulemaking

The proposed rules may be accessed at the Department's website (<http://www.lopdm.us>); obtained from the Law Offices of the Public Defender, 301 N. Guadalupe Street, Suite 201, Santa Fe, NM 87501 or by contacting Barbara. Auten@lopdm.us.

Written comments regarding the proposed rulemaking must be submitted to Law Offices of the Public Defender; Attention: Barbara Auten, Human Resources Director; 301 North Guadalupe Street; Santa Fe, NM 87501 or to Barbara. Auten@lopdm.us not later than 5 pm, June 15, 2015 however, the submission of written comments as soon as possible is encouraged.

Please see the Department's website (<http://www.lopdm.us>) for other opportunities for public comment.

PUBLIC EDUCATION DEPARTMENT

Notice of Proposed Rulemaking

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Monday, June 29, 2015, from 9:00 a.m. to 11:00 a.m.. The purpose of the public hearing will be to obtain input on the proposed amendments to 6.30.5 NMAC (Optional Full-Day Kindergarten).

Interested individuals may provide comments at the public hearing and/or submit written comments to Melinda Webster, Director, Literacy and Early Childhood Bureau, via email at [rule.feedback@state.nm.us](mailto:feedback@state.nm.us), fax (505) 827-6597 or directed to Ms. Webster, Literacy and Early Childhood Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website under the "Public Notices" link (<http://ped.state.nm.us/ped/PublicNotices.html>), or obtained from Ms. Webster by calling (505) 827-6567.

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

COMMISSION OF PUBLIC RECORDS

NOTICE OF RULE HEARING

The New Mexico Commission of Public Records has scheduled a rule hearing

for Thursday, June 25, 2015, at 9:00 A.M. The hearing will be conducted by an appointed hearing officer at the New Mexico State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. The purpose of this hearing is to consider repealing, amending and adopting new rules as listed below.

Advances in technology have led to the prevalent use of electronic formats for the creation and dissemination of records. The difficulty encountered by state employees in classifying public records has become increasingly evident, especially when classifying electronic records and e-mail correspondence. E-mail classification should be based on the content of the message; however, the subjectivity involved in determining proper classification creates confusion and inconsistencies.

At present, there are approximately 6,000 classifications into which a record could be classified appearing in more than 100 departmental schedules. Departmental schedules, which are unique to each agency, are broken down by administrative program and detailed according to specific document. This schedule type frequently results in duplicate classifications on multiple schedules. Changes in procedures and administrative overlap make departmental schedules difficult to maintain as new processes are implemented and new forms are created.

In meeting its statutory mandate to provide efficient, effective, and economical records management programs, the Commission of Public Records has made it a priority to streamline these records classifications by moving to a functional schedule.

Functional records classification is based on the function or use of a record rather than its programmatic placement or point of origin. This type of schedule prevents duplicate record series and minimizes the overall number of classifications. To illustrate, there are currently 55 classifications contained in the general financial schedule, some of which have multiple retentions. These 55 series can be reduced to merely five functional classifications: budgeting, accounts payable, accounts receivable, payroll, and contracts. This reduction can greatly simplify how state employees classify their records.

In addition to functional schedules, the Commission will consider repealing and replacing the Historical Records Grant Program Guidelines to make application for funding less cumbersome and to update federal and state requirements.

Public comment will also be taken related to a potential new rule for the use of electronic and digital signatures.

Interested individuals may provide comments regarding the proposed rulemaking actions at the rule hearing and/or submit written comments via email at rmd.cpr@state.nm.us. Written comments must be received no later than 5:00 p.m. on June 23, 2015. The submission of written comments as soon as possible is encouraged. Persons offering written comments at the meeting must have 2 copies for the hearing officer. A copy of the agenda and proposed rules are available on the Commission webpage at www.nmcp.state.nm.us.

The agenda is subject to change up to 72 hours prior to the meeting.

Repeal and Replace

1.13.5 NMAC New Mexico Historical Records Grant Program Guidelines

1.12.7 NMAC Digital/Electronic Signature

Repeal

1.15.1 NMAC GRRDS, General Provisions

1.15.2 NMAC GRRDS, General Administrative Records

1.15.3 NMAC GRRDS, General Administrative Records (for Use by Local Government and Educational Institutions)

1.15.4 NMAC GRRDS, General Financial

1.15.5 NMAC GRRDS, General Financial Schedule (Interpretive)

1.15.6 NMAC GRRDS, General Personnel Records

1.15.7 NMAC GRRDS, General Personnel (Interpretive)

1.15.8 NMAC GRRDS, General Medical Records

1.15.9 NMAC GRRDS, General Hospital and Medical Center Records

1.16.111 NMAC LRRDS, Legislative Council Service

1.16.112 NMAC LRRDS, Legislative Finance Committee

1.16.117 NMAC LRRDS, Legislative School Study Committee

1.16.119 NMAC LRRDS, Legislative Maintenance

1.17.205 NMAC JRRDS, Supreme Court Law Library

1.17.210 NMAC JRRDS, Judicial Standards Commission

1.17.215 NMAC JRRDS, Court of Appeals

1.17.216 NMAC JRRDS, Supreme Court

1.17.218 NMAC JRRDS, New Mexico Magistrate Courts

1.17.219 NMAC JRRDS, Board Governing the Recording of Judicial Proceedings

1.17.220 NMAC JRRDS, Administrative Office of the Courts

1.17.230 NMAC JRRDS, New Mexico District Courts

1.17.244 NMAC JRRDS, Bernalillo County Metropolitan Court

1.17.264 NMAC JRRDS, Administrative Office of the District Attorneys and the District Offices

1.18.305 NMAC ERRDS, Office of the Attorney General

1.18.308 NMAC ERRDS, Office of the State Auditor

1.18.333 NMAC ERRDS, Taxation and Revenue Department

1.18.337 NMAC ERRDS, State Investment Council

1.18.341 NMAC ERRDS, Department of Finance and Administration

1.18.342 NMAC ERRDS, Public School Insurance Authority

1.18.343 NMAC ERRDS, Retiree Health Care Authority

1.18.350 NMAC ERRDS, General Services Department

1.18.352 NMAC ERRDS, Educational Retirement Board

1.18.355 NMAC ERRDS, Public Defender Department

1.18.356 NMAC ERRDS, NM Office of the Governor

1.18.360 NMAC ERRDS, Lieutenant Governor's Office

1.18.361 NMAC ERRDS, Office of the Chief Information Officer

1.18.366 NMAC ERRDS, Public Employees Retirement Association

1.18.369 NMAC ERRDS, Commission of Public Records

1.18.370 NMAC ERRDS, Secretary of State

1.18.378 NMAC ERRDS, State Personnel Office

1.18.379 NMAC ERRDS, Public Employee Labor Relations Board

1.18.394 NMAC ERRDS, Office of the State Treasurer

1.18.404 NMAC ERRDS, Board of Examiners for Architects

1.18.418 NMAC ERRDS, Tourism Department

1.18.419 NMAC ERRDS, Economic Development Department
 1.18.420 NMAC ERRDS, Regulation and Licensing Department
 1.18.430 NMAC ERRDS, Public Regulation Commission
 1.18.440 NMAC ERRDS, Office of Superintendent of Insurance
 1.18.446 NMAC ERRDS, Board of Medical Examiners
 1.18.449 NMAC ERRDS, Board of Nursing
 1.18.460 NMAC ERRDS, State Fair Commission
 1.18.464 NMAC ERRDS, State Board of Licensure for Professional Engineers and Surveyors
 1.18.465 NMAC ERRDS, Gaming Control Board
 1.18.469 NMAC ERRDS, State Racing Commission
 1.18.479 NMAC ERRDS, Board of Veterinary Medicine
 1.18.505 NMAC ERRDS, Cultural Affairs Department
 1.18.508 NMAC ERRDS, New Mexico Livestock Board
 1.18.516 NMAC ERRDS, Department of Game and Fish
 1.18.521 NMAC ERRDS, Energy, Minerals and Natural Resources Department
 1.18.539 NMAC ERRDS, State Land Office
 1.18.550 NMAC ERRDS, Office of the State Engineer
 1.18.601 NMAC ERRDS, Commission on the Status of Women
 1.18.605 NMAC ERRDS, Martin Luther King Jr Commission
 1.18.606 NMAC ERRDS, Commission For the Blind
 1.18.609 NMAC ERRDS, Indian Affairs Department
 1.18.624 NMAC ERRDS, Aging and Long Term Services Department
 1.18.630 NMAC ERRDS, Human Services Department
 1.18.631 NMAC ERRDS, Department of Workforce Solutions
 1.18.632 NMAC ERRDS, Worker's Compensation Administration
 1.18.644 NMAC ERRDS, Division of Vocational Rehabilitation
 1.18.647 NMAC ERRDS, Developmental Disabilities Planning Council
 1.18.665 NMAC ERRDS, Department of Health
 1.18.667 NMAC ERRDS, New Mexico Department of Environment
 1.18.669 NMAC ERRDS, Health Policy Commission
 1.18.670 NMAC ERRDS, Veterans' Services Department

1.18.690 NMAC ERRDS, Children, Youth and Families Department
 1.18.705 NMAC ERRDS, Department of Military Affairs
 1.18.760 NMAC ERRDS, Adult Parole Board
 1.18.765 NMAC ERRDS, Juvenile Public Safety Advisory Board
 1.18.770 NMAC ERRDS, Corrections Department
 1.18.780 NMAC ERRDS, Crime Victims Reparation Commission
 1.18.790 NMAC ERRDS, Department of Public Safety
 1.18.794 NMAC ERRDS, Mounted Patrol
 1.18.795 NMAC ERRDS, Homeland Security and Emergency Management Department
 1.18.805 NMAC ERRDS, Department of Transportation
 1.18.924 NMAC ERRDS, Public Education Department
 1.18.926 NMAC ERRDS, School For the Blind and Visually Impaired
 1.18.927 NMAC ERRDS, New Mexico School For the Deaf
 1.18.940 NMAC ERRDS, Public Schools Facilities Authority
 1.18.950 NMAC ERRDS, Higher Education Department
 1.18.954 NMAC ERRDS, New Mexico Department of Agriculture
 1.18.980 NMAC ERRDS, NM Office of the Medical Investigator
 1.19.2 NMAC LGRRDS, Office of the County Assessor
 1.19.3 NMAC LGRRDS, Office of the County Clerk
 1.19.4 NMAC LGRRDS, Board of County Commissioners County Managers
 1.19.5 NMAC LGRRDS, Office of the County Sheriff
 1.19.6 NMAC LGRRDS, Office of the County Treasurer
 1.19.7 NMAC LGRRDS, Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA)
 1.19.8 NMAC LGRRDS, New Mexico Municipalities
 1.19.9 NMAC LGRRDS, New Mexico Municipal Courts
 1.19.10 NMAC LGRRDS, Middle Rio Grande Conservancy District
 1.19.11 NMAC LGRRDS, Soil and Water Conservation Districts and Watershed Districts
 1.20.2 NMAC EDRRDS, New Mexico Public Schools
 1.20.3 NMAC EDRRDS, New Mexico Colleges and Universities

New
 1.21.2 NMAC FRRDS, Public Records

**REGULATION AND LICENSING DEPARTMENT
 PUBLIC ACCOUNTANCY BOARD**

Notice of Proposed Rulemaking

The New Mexico Public Accountancy Board ("Board") will convene a public hearing and regular Board meeting on Tuesday, August 11, 2015. The hearing and meeting will be held at 9:00 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules.

The Board's Rules Committee will recommend that the Board adopt amendments to the following rules:

Continued on the following page

NMAC NUMBER	RULE NAME
16.60.1 NMAC	General Provisions
16.60.3 NMAC	Licensure and Continuing Professional Education Requirements
16.60.4 NMAC	Firm Permit Application, Renewal, Reinstatement, and Notification Requirements
16.60.5 NMAC	Rules of Conduct

Notice of the hearing and Board meeting has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at www.rld.state.nm.us/accountancy. Copies may also be obtained by contacting the Board office at (505) 222-9851. Written comments regarding the proposed amendments should be directed to Mrs. Jeanette Contreras, Licensing Manager, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113; faxed to (505) 222-9855; or sent via e-mail to Jeanette.Contreras@state.nm.us. Comments must be received by 5:00 p.m. on Friday, July 31, 2015; however the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 222-9850 by 5:00 p.m. on Friday, July 31, 2015.

REGULATION AND LICENSING DEPARTMENT BOARD OF PHARMACY

Regular Board Meeting - Notice to the Public

The New Mexico Board of Pharmacy will convene on:

June 24th 2015 at 1:00 p.m. – 5:00 p.m.

June 25th 2015 at 9:00 a.m. – 5:00 p.m.

June 26th 2015 at 9:00 a.m. – 12:00 noon (tentative)

In the Board of Pharmacy Conference Room located at 5200 Oakland Ave., NE, Albuquerque, NM for the purpose of conducting a regular board meeting. Anyone who needs special accommodations for the meeting should contact the board office at (505) 222-9830 or contact Debra Wilhite, Administrative Secretary, at (505) 222-9835 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us as soon as possible.

You may view and obtain copies of the agenda (tentative) starting June 12, 2015 through the board's website: www.rld.state.nm.us/boards/pharmacy.aspx.

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Executive Director, Ben Kesner, Ben.Kesner@state.nm.us or Debra Wilhite, debra.wilhite@state.nm.us no later than Monday, June 12, 2015, if in attendance must provide 12 copies of the documentation for distribution to board members. (*Board staff is not required to make copies.*)

The Board will address:

Rule Hearings:

- 16.19.6 NMAC Pharmacies - New section 27; Automated Drug Dist. Systems in Health Care Facilities
- 16.19.26 NMAC Pharmacist Prescriptive Authority; Immunization
- 16.19.29 NMAC Controlled Substances Prescription Monitoring Program

*Executive Director's Report:

*The board may go into Executive Session to discuss these items and any other items pursuant to Section 10-15-1H(1), Section 10-15-1H(2), Section 10-15-1H(3) or Section 10-15-1H(7) of the Open Meeting Act. Agenda items may be executed at any time during the meeting to accommodate hearings.

Published in the Albuquerque Journal May 14, 2015

WATER QUALITY CONTROL COMMISSION

Amended Notice of Public Hearing to Consider Proposed Amendments to the Underground Injection Control Rules, 20.6.2.3000 NMAC and 20.6.2.5000 NMAC

This Amended Notice of Public Hearing revises the Notice of Hearing published in the New Mexico Register on May 15, 2015. This Notice contains additional deadlines established by the procedural order governing the hearing. The Notice also includes an updated location for the hearing in Artesia, New Mexico.

The New Mexico Water Quality Control Commission will hold a public hearing beginning at 9:00 a.m. on July 14, 2015 at the Artesia City Hall Chambers, 511 West Texas Avenue, Artesia, New Mexico, 88210 to consider proposed amendments to the New Mexico Water Quality Act rules, 20.6.2 NMAC, proposed in WQCC Docket Number 14-15 (R) by Navajo Refining Company, L.L.C. The proposal addresses the underground injection control rules and would amend Sections 20.6.2.3106-07, 20.6.2.3109, 20.6.2.5002-04, 20.6.2.5101-04, 20.6.2.5200-01, 20.6.2.5204, and 20.6.2.5209-10 NMAC and add new text as 20.6.2.5300 through 20.6.2.5399 NMAC.

In 1982, New Mexico applied for and received Primary Enforcement Authority ("Primacy") from the United States Environmental Protection Agency ("EPA") to administer the Federal Safe Drinking Water Act Underground Injection Control Program in New Mexico. The New Mexico Water Quality Control Commission rules contain the principal parts of New Mexico's approved program delegation. The proposed rule changes that are the subject of the July 14, 2015 hearing seek to amend certain parts of those rules governing Class I underground injection control wells. Specifically, the proposed rule changes would (1) modify the current prohibition on Class I underground injection control wells for hazardous waste to allow oil refineries to seek permits to operate Class I underground injection control wells for hazardous waste that they generate; and (2) authorize the permitting of Class I underground injection control wells for hazardous waste generated by oil refineries that are consistent with federal construction, operation, monitoring, closure, and financial assurance standards.

If the Water Quality Control Commission adopts the proposed rule changes, the final rule will be submitted to EPA for approval as part of New Mexico's delegated authority to administer the Underground Injection Control program.

The proposed changes and the procedural order governing the hearing may be reviewed during regular business hours at the Commission Administrator's office located in the Harold Runnels Building, 1190 St. Francis Drive, Room S-2102 Santa Fe, New Mexico, 87502.

In addition, copies of the proposed amendments and the procedural order governing the hearing are posted on the NMED website at <http://www.nmenv.state.nm.us>. Copies at this location will be available to individuals for photocopying at their own expense. Requests for further information about the proposed rule should be directed to Pam Castañeda, Commission Administrator, at the above address.

The hearing will be conducted in accordance with the Guidelines for Water Quality Control Commission Regulation Hearings, the Water Quality Act, Section 74-6-6 NMSA 1978, and other applicable procedures and procedural orders. Written comments regarding the proposed revisions may be addressed to Pam Castañeda, Commission Administrator, at the above address; reference docket number WQCC 14-15 (R). Written comments must be received by July 14, 2015.

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

Pursuant to the procedural order, persons wishing to present technical testimony must file with the Commission a written notice of intent to do so. The requirements for a notice of intent can be found in the Commission's Guidelines for Regulation Hearings. Notices of intent for the hearing, along with written technical testimony, must be received by the Office of the Commission Administrator by 5:00 pm on June 15, 2015, and should reference the name of the regulation, the date of the hearing, and docket number

WQCC 14-15 (R). Any rebuttal testimony to the written technical testimony must be submitted to the Office of the Commission Administrator by 5:00 pm on June 29, 2015, and should reference the name of the regulation, the date of the hearing, and docket number WQCC 14-15 (R). All motions related to the hearing must be received by the Office of the Commission Administrator by 5:00 pm on July 6, 2015, and should reference the name of the regulation, the date of the hearing, and docket number WQCC 14-15 (R).

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, contact Pam Castañeda at least ten days prior to the hearing or as soon as possible at **505.827.2425** or Pam.Castaneda@state.nm.us. Public documents can be provided in various accessible formats. Contact Pam Castañeda if accessible format is needed.

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

End of Notices of Rulemaking and Proposed Rules Section

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Adopted Rules

Effective Date and Validity of Rule Filings

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

ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.61 NMAC, Sections 7 and 11, effective 5/29/2015.

20.11.61.7 DEFINITIONS: In addition to the definitions in 20.11.61 NMAC, the definitions in 20.11.1 NMAC, *General Provisions*, shall apply unless there is a conflict between definitions, in which case the definition in 20.11.61 NMAC shall govern.

A. "Act" means the federal Clean Air Act, as amended, 42 U. S. C. Sections 7401 et seq.

B. "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with Paragraphs (2) through (4) of Subsection B of 20.11.61.7 NMAC.

(1) This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 20.11.61.20 NMAC. Instead, Subsections I and VV of 20.11.61.7 NMAC shall apply for those purposes.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(3) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

C. "Administrator" means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

D. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with the following:

(1) times of visitor use of the federal class I area; and
(2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 *Definitions*.

E. "Air quality related values (AQRV)" means visibility and other scenic, cultural, physical, biological, ecological, or recreational resources which may be affected by a change in air quality resulting from the emissions of a proposed major stationary source or major modification that interferes with the management, protection, preservation, or enjoyment of the AQRV of a federal class I area.

F. "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) the applicable standards as set forth in 40 CFR Parts 60 and 61;
(2) the applicable state implementation plan emissions limitation, including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

G. "Associated emission sources" means secondary emissions and all reasonably foreseeable emissions of regulated pollutants from the growth of general residential, commercial, industrial, governmental emission sources and other mobile and non-mobile emission sources which are associated with or support the proposed new major stationary source or major modification. Other mobile and non-mobile emission sources shall include, but not be limited to, new highways and roads or improvements to existing highways and roads to increase capacity, new parking facilities or improvements to existing parking facilities to increase capacity, service enhancements to ground and air public transportation to include the building of new public transportation facilities or improvements to existing public transportation facilities to increase capacity; and the building of new public or private educational facilities or improving existing public or private educational facilities to increase enrollment.

H. "Attainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling not to exceed any NAAQS for such pollutant, and is so designated under Section 107(d) (1)(D) or (E) of the act.

I. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with Paragraphs (1)-(4) of Subsection I of 20.11.61.7 NMAC.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a

different time period upon a determination that it is more representative of normal source operation.

(a)

The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b)

The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c)

For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(d)

The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of Paragraph (1) of Subsection I of 20.11.61.7 NMAC.

(2)

For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10 year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under 20.11.61 NMAC or under a plan approved by the administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

(a)

The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b)

The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c)

The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

(d)

For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(e)

The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (2) of Subsection I of 20.11.61.7 NMAC.

(3)

For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4)

For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of Subsection I of 20.11.61.7 NMAC, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of Subsection I of 20.11.61.7 NMAC, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of Subsection I of 20.11.61.7 NMAC.

J. "Baseline area"

(1)

Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the act in which the major source or major modification establishing the minor source

baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than one microgram per cubic meter ($1 \mu\text{g}/\text{m}^3$) (annual average) for SO_2 , NO_2 or PM_{10} ; or equal to or greater than $0.3 \mu\text{g}/\text{m}^3$ (annual average) for $\text{PM}_{2.5}$.

(2)

Area redesignations under Section 107(d)(1)(A)(ii) or (iii) of the act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a)

establishes a minor source baseline date; or

(b)

is subject to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166, and would be constructed in the same state as the state proposing the redesignation.

(3)

Any baseline area established originally for total suspended particulates (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date in accordance with Paragraph (3) of Subsection MM of 20.11.61.7 NMAC.

K. "Baseline

concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

(1)

A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a)

the actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in Paragraph (2) of Subsection K of 20.11.61.7 NMAC;

(b)

the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(2)

The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a)

actual emissions from any major stationary source on which construction commenced after the major source

baseline date; and

(b) actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

L. “Begin actual construction” means, in general, the initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities which mark the initiation of the change.

M. “Best available control technology (BACT)” means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification, which the director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

N. “Building, structure, facility or installation” means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the

control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same “major group” (i.e., which have the same first two-digit code) as described in the standard industrial classification (SIC) manual, 1972, as amended by the 1977 supplement (U. S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively) or any superseding SIC manual.

O. “Class I area” means any federal land that is classified or reclassified as “class I” as listed in 20.11.61.25 NMAC.

P. “Commence” as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Q. “Complete” means, in reference to an application for a permit, that the department has determined the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

R. “Construction” means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

S. “Continuous emissions monitoring system (CEMS)” means all of the equipment that may be required to meet the data acquisition and availability requirements of 20.11.61 NMAC, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

T. “Continuous emissions rate monitoring system (CERMS)” means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

U. “Continuous parameter monitoring system (CPMS)” means all of the equipment necessary to meet the data acquisition and availability requirements of 20.11.61 NMAC, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

V. “Department” means the city of Albuquerque, environmental health department or its successor agency.

W. “Director” means the director of the city of Albuquerque, environmental health department or the director of its successor agency.

X. “Electric utility steam generating unit” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

Y. “Emissions unit” means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in 20.11.61.7 NMAC. For purposes of 20.11.61 NMAC, there are two types of emissions units as follows:

(1) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated;

(2) an existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of Subsection Y of 20.11.61.7 NMAC. A replacement unit is an existing unit.

Z. “Federal land manager” means, with respect to any lands in the United States, a federal level cabinet secretary of a federal level department (e.g. interior department) with authority over such lands.

AA. “Federally enforceable” means all limitations and conditions which are enforceable by the administrator, including:

(1) those requirements developed pursuant to 40 CFR Parts 60 and 61;

(2) requirements within any applicable state implementation plan (SIP);

(3) any permit requirements established pursuant to 40 CFR 52.21; or

(4) under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that expressly requires adherence to any permit issued under such program.

BB. “Fugitive emissions” means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

CC. “Greenhouse gases” or “GHGs” means the air pollutant defined in § 86.1818–12(a) of Chapter I of Title 40 of the CFR, as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

DD. “High terrain” means any area having an elevation 900 feet or more above the base of a source’s stack.

EE. “Indian governing body” means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

FF. “Innovative control technology” means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

GG. “Low terrain” means any area other than high terrain.

HH. “Lowest achievable emission rate (LAER)” means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which

is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source; in no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

II. “Major modification”

(1) Means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase of a regulated NSR pollutant; and a significant net emissions increase of that pollutant from the major stationary source.

(2) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(3) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which:

(i) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or

under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 40 CFR 51.166;

(g) any change in ownership at a stationary source;

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan for the state in which the project is located; and

(ii) other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated;

(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated NSR pollutant emitted by the unit; this exemption shall apply on a pollutant-by-pollutant basis; or

(j) the reactivation of a very clean coal-fired electric utility steam generating unit.

(4) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 20.11.61.20 NMAC for a PAL for that pollutant.

Instead, the definition at Paragraph (8) of Subsection B of 20.11.61.20 NMAC shall apply.

JJ. “Major source baseline date” means:

(1) in the case of PM₁₀ and sulfur dioxide, January 6, 1975;

(2) in the case of nitrogen dioxide, February 8, 1988; and

(3) in the case of PM_{2.5}, October 20, 2010.

KK. “Major stationary source”

(1) means:
(a) any stationary source listed in Table 1 of 20.11.61.26 NMAC which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant;

(b) notwithstanding the stationary source categories specified in Subparagraph (a) of Paragraph (1) of Subsection KK of 20.11.61.7 NMAC, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any regulated NSR pollutant; or

(c) any physical change that would occur at a stationary source not otherwise qualifying under Subsection KK of 20.11.61.7 NMAC, as a major stationary source if the change would constitute a major stationary source by itself.

(2) A major source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 of 20.11.61.26 NMAC or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

LL. “Mandatory federal class I area” means any area identified in 40 CFR Part 81, Subpart D.

MM. “Minor source baseline date” means the earliest date after the trigger date on which a major stationary source or major modification subject to 40 CFR 52.21, or to regulations approved pursuant to 40 CFR 51.166, submits a complete application under the relevant regulations.

(1) The trigger dates are:

(a) August 7, 1977, for PM₁₀ and sulfur dioxide; and

(b) February 8, 1988 for nitrogen dioxide; and

(c) October 20, 2011, for PM_{2.5}.

(2) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) the area in which the proposed major stationary source or major modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the federal act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and

(b) in the case of a major stationary source, the

pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(3) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the department may rescind any such minor source baseline date where it can be shown, to the director’s satisfaction that, either the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

NN. “Natural conditions” includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

OO. “Necessary preconstruction approvals or permits” mean those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the New Mexico state implementation plan.

PP. “Net emissions increase”

(1) Means, that with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection D of 20.11.61.11 NMAC; and

(b) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases shall be determined as provided in Subsection I of 20.11.61.7 NMAC, except that Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection I of 20.11.61.7 NMAC shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) the date five years prior to the commencement of construction on the particular change; and

(b) the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs between:

(i) the date five years prior to the commencement of construction on the particular change; and

(ii) the date that the increase from the particular change occurs; and

(b) the department has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.166, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(c) the increase or decrease in emissions did not occur at a *clean unit*, as defined in 40 CFR 51.166 (b)(3)(iii)(c) and Federal Register Vol. 76 No. 61, 3/30/11, p. 17554.

(d) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in Paragraph (3) of Subsection KK of 20.11.61.7 NMAC or it occurs at an emission unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in Paragraph (3) of Subsection KK of 20.11.61.7 NMAC and that are not, by themselves, part of a listed source category.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or oxides of nitrogen that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(a) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(7) an increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant; any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) Paragraph (2) of Subsection B of 20.11.61.7 NMAC shall not apply for determining creditable increases and decreases.

QQ. "Nonattainment area" means an area which has been designated under Section 107 of the act as nonattainment for one or more of the NAAQS by EPA.

RR. "Portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly.

SS. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollutant control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect the limitation would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

TT. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

UU. "Project" means a physical change in, or change in method of operation of, an existing major stationary source.

VV. "Projected actual emissions"

(1) Means

the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

(a) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under an approved SIP; and

(b) shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(c) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection I of 20.11.61.7 NMAC and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(3) in lieu of using the method set out in Subparagraphs (a)-(c) of Paragraph (2) of Subsection VV of 20.11.61.7 NMAC, may elect to use the emissions unit's potential to emit in tons per year.

WW. "Regulated new source review pollutant" or "regulated NSR pollutant" means the following:

(1) any pollutant for which a NAAQS has been promulgated; this includes, but is not limited to the following:

(a) PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from

a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in PSD permits; compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of 40 CFR 51.166 unless the applicable implementation plan required condensable particulate matter to be included;

(b) any pollutant identified under Subparagraph (b) of Paragraph (1) of Subsection WW of 20.11.61.7 NMAC as a constituent or precursor to a pollutant for which a NAAQS has been promulgated; precursors identified by the administrator for purposes of NSR are the following:

(i) volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(ii) sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas;

(iii) nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations;

(iv) volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment or unclassifiable area, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations;

(2) any pollutant that is subject to any standard promulgated under Section 111 of the act;

(3) any class I or II substance subject to a standard promulgated under or established by Title VI of the act;

(4) any

pollutant that otherwise is “subject to regulation” under the act as defined in Subsection CCC of 20.11.61.7 NMAC;

(5)

notwithstanding Paragraphs (1) through (4) of Subsection WW of 20.11.61.7 NMAC, the term “regulated NSR pollutant” shall not include any or all hazardous air pollutants either listed in Section 112 of the act, or added to the list pursuant to Section 112(b)(2) of the act, and which have not been delisted pursuant to Section 112(b)(3) of the act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the act;

(6)

particulate matter (PM) emissions, PM_{2.5} emissions, and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM_{2.5} and PM₁₀ in PSD permits; compliance with emissions limitations for PM, PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of 20.11.61 NMAC unless the applicable implementation plan required condensable particulate matter to be included.

XX. “Replacement unit”

means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The

emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b) (1), or the emissions unit completely takes the place of an existing emissions unit.

(2)

The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The

replacement unit does not change the basic design parameter(s) of the process unit.

(4) The

replaced emissions unit is permanently removed from the major stationary

source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

YY. “Secondary emissions” means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of 40 CFR 51.166, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

ZZ. “Significant” means:

(1) in reference

to a net emissions increase or the potential of a source to emit any of the pollutants listed in Table 2 of 20.11.61.27 NMAC, a rate of emissions that would equal or exceed any of the corresponding emission rates listed in Table 2 of 20.11.61.27 NMAC;

(2) in reference

to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that Paragraph (1) of Subsection ZZ of 20.11.61.7 NMAC, does not list, any emissions rate; and

(3)

notwithstanding Paragraph (1) of Subsection ZZ of 20.11.61.7 NMAC, any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 µg/m³ (24-hour average).

AAA. “Significant emissions increase” means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

BBB. “Stationary source” means any building, structure, facility, or installation which emits, or may emit, any regulated NSR pollutant.

CCC. “Subject to regulation” means, for any air pollutant,

that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the administrator in Subchapter C of Chapter I of Title 40 of the CFR, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) Greenhouse

gases (GHGs) shall not be subject to regulation except as provided in Paragraphs (4) and (5) of Subsection CCC of 20.11.61.7 NMAC and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in 20.11.61.20 NMAC, and complies with the PAL permit containing the GHG PAL.

(2) For

purposes of Paragraphs (3) through (5) of Subsection CCC of 20.11.61.7 NMAC, the term “tpy CO₂e equivalent emissions (CO₂e)” shall represent an amount of GHGs emitted, and shall be computed as follows:

(a)

multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas’s associated global warming potential published at Table A-1 to subpart A of Part 98 of Chapter I of Title 40 of the CFR — *Global Warming Potentials*; ~~for purposes of Paragraph (2) of Subsection CCC of 20.11.61.7 NMAC, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material);~~

(b)

sum the resultant value from Subparagraph (a) of Paragraph (2) of Subsection CCC of 20.11.61.7 NMAC for each gas to compute a tpy CO₂e.

(3) The

term “emissions increase” as used in Paragraphs (4) and (5) of Subsection CCC of 20.11.61.7 NMAC, shall mean that both a significant emissions increase

(as calculated using the procedures in Subsection D of 20.11.61.11 NMAC) and a significant net emissions increase (as defined in Subsection PP of 20.11.61.7 NMAC and Subsection ZZ of 20.11.61.7 NMAC) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and “significant” is defined as 75,000 tpy CO₂e instead of applying the value in Table 2 of 20.11.61.27 NMAC.

(4) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) the stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or

(b) the stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more; and,

(5) beginning July 1, 2011, in addition to the provisions in Paragraph (4) of Subsection CCC of 20.11.61.7 NMAC, the pollutant GHGs shall also be subject to regulation:

(a) at a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e; or

(b) at an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more.

DDD. “Temporary source” means a stationary source which changes its location or ceases to exist within two years from the date of initial start of operations.

EEE. “Visibility impairment” means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

FFF. “Volatile organic compound (VOC)” means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions; this includes any such organic compound

other than those which the administrator designates as having negligible photochemical reactivity under 40 CFR 51.100(s).

[20.11.61.7 NMAC - Rp, 20.11.61.7 NMAC, 1/23/06; A, 5/15/06; A, 8/30/10; A, 1/10/11; A, 5/13/13; A, 5/29/15]

20.11.61.11 APPLICABILITY:

A. The requirements of 20.11.61 NMAC apply to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as attainment or unclassifiable.

B. [The requirements of Sections 20.11.61.12 NMAC and 20.11.61.13 NMAC, Subsections A through C of 20.11.61.14 NMAC, Paragraph (1) of Subsection B of 20.11.61.15 NMAC, Subsections A and B of 20.11.61.16 NMAC, 20.11.61.17 NMAC, Subsections A through C of 20.11.61.18 NMAC, Subsections B and C of 20.11.61.21 NMAC and 20.11.61.24 NMAC apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as 20.11.61 NMAC otherwise provides:

C. No new major stationary source or major modification to which the requirements of Subsections A, B, C and D of 20.11.61.12 NMAC, Section 20.11.61.13 NMAC, Subsections A through C of 20.11.61.14 NMAC, Paragraph (1) of Subsection B of 20.11.61.15 NMAC, Subsections A and B of 20.11.61.16 NMAC, 20.11.61.17 NMAC, Subsections A through C of 20.11.61.18 NMAC, Subsections B and C of 20.11.61.21 NMAC and 20.11.61.24 NMAC apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.] The requirements of 20.11.61.12 NMAC through 20.11.61.18 NMAC, 20.11.61.21 NMAC and 20.11.61.24 NMAC apply to the construction of any new major stationary source or the major modification of any existing major stationary source except as 20.11.61 NMAC otherwise provides.

C. No new major stationary source or major modification to which the requirements of Subsections A, B, C, and D of 20.11.61.12 NMAC, 20.11.61.13 NMAC through 20.11.61.18 NMAC, 20.11.61.21 NMAC and 20.11.61.24 NMAC apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

D. Applicability procedures.

(1) Except as otherwise provided in Subsection E of 20.11.61.11 NMAC, and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) through (5) of Subsection D of 20.11.61.11 NMAC. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in Subsection PP of 20.11.61.7 NMAC. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the

sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of Subsection D of 20.11.61.11 NMAC as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

E. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under 20.11.61.20 NMAC. [20.11.61.11 NMAC - N, 1/23/06; A, 8/30/10; A, 1/10/11; A, 5/13/13; A, 5/29/15]

**HUMAN SERVICES
DEPARTMENT
MEDICAL SERVICES DIVISION**

Explanatory paragraph: This is an emergency amendment to 8.321.2 NMAC, Section 10, effective May 15, 2015. In 8.321.2.10 NMAC, Paragraphs (1) through (3) of Subsection A and Subsections B through I were not published as there were no changes.

8.321.2.10 APPLIED BEHAVIOR ANALYSIS: MAD pays for medically necessary, empirically supported, applied behavior analysis (ABA) services for eligible recipients 12 months up to 21 years of age who have a well-documented medical diagnosis of autism spectrum disorder (ASD), and for eligible recipients 12 months up to three years of age who have well-documented risk for the development of ASD. ABA services are provided to an eligible recipient as part of a three-stage comprehensive approach consisting of evaluation, assessment, and treatment which stipulates that ABA services be provided in coordination with other medically necessary services (e.g., family infant toddler program (FIT) services, occupational therapy, speech language therapy, medication management, etc.). Following a referral to an approved autism evaluation provider (AEP) to confirm the presence of, or risk for ASD, utilizing a comprehensive diagnostic evaluation, and the production of an integrated service plan (ISP) (stage 1), a behavior analytic assessment is conducted and a behavior analytic treatment plan is developed as appropriate for the selected service model (stage 2). ABA services are then rendered by an approved ABA provider (AP) in accordance with the treatment plan (stage 3). A HSD MCO must provide intensive care coordination of services for members

authorized for ABA services. See the ABA billing instructions for detailed information for eligible providers and practitioners, service requirements, prior authorizations, and reimbursement for ABA stages 1 through 3. In this section of this rule, members of a MCO are included in the term eligible recipients.

A. Eligible providers: ABA services are rendered by a number of providers and practitioners: an AEP; a behavior analyst (BA), a behavior technician (BT) through an AP; and an ABA specialty care provider. Each ABA provider and practitioner has corresponding enrollment requirements and renders unique services according to his or her provider type and specialty. As an example, a practitioner may be eligible to render services as an AEP, BA or an ABA specialty care provider when the specific ABA billing requirements are met. A BT may only render BT services. A BA may render BT services or possibly ABA specialty care services.

(4) Stage 2 interim ABA provider/supervisor - (time-limited): Up to and including [December 31, 2015] June 30, 2016, ABA services may be delivered and supervised by a clinician who has the minimum qualifications listed below; however, the provider may not refer to him/herself as a "behavior analyst" as this title is reserved for those meeting the criteria above. Rather, the provider, approved on a temporary basis only, may refer to him/herself as an "interim ABA supervisor" or "interim ABA practitioner." The AP must provide documentation of all of the following:

- (a)** a master's degree [~~in a behavioral health or therapeutic discipline that allows for the provider to be a recognized behavioral health independently licensed provider~~] which the BACB® recognizes and would lead to certification as a BCBA;
- (b)** New Mexico licensure, as appropriate for degree and discipline;
- (c)** clinical experience and supervised training in the evidence-based treatment of children with ASD, specifically ABA;
- (d)** experience in supervising direct support personnel in the delivery and evaluation of ABA services.

(5) Stage 3 behavioral technician: A BT, under supervision of a BA, may implement

Stage 3 ABA treatment plan interventions/ services. MAD recognizes two types of BTs:

- (a)** [~~Documented credentialing in behavior analysis: on or following January 1, 2015, provide written attestation, and when appropriate provide formal records, documenting that the BT meets the following requirements:~~] **Registered behavioral technician® (RBT®) by the BACB® with the following:**
 - (i)** be at least 18 years of age;
 - (ii)** possess a minimum of a high school diploma or equivalent;
 - (iii)** successfully complete a criminal background registry check;
 - (iv)** complete a minimum of four hours of training in ASD (prior to the BT billing for ABA services) including, but not limited to, training about prevalence, etiology, core symptoms, characteristics, and learning differences;
 - (v)** complete 40 hours of training in ABA that meets the requirements for Registered behavioral technician® (RBT®) by the BACB®;
 - (vi)** at least 20 hours of RBT training (in addition) to the four hours of ASD training) must occur prior to the AP billing for BT services; the other 20 hours of RBT training must be accrued, and RBT® certification from the BACB must be secured, no more than 90 calendar days following the first submission of billing for BT services.
- (b)** **Documented training in behavior analysis, without RBT® credential - (time-limited):** the BT may render services for up to six months while working towards his or her certification as a RBT® when the AP provides written attestation that the BT meets the following requirements:
 - (i)** be at least 18 years of age;
 - (ii)** possess a minimum of a high school diploma or equivalent;
 - (iii)** successfully complete a criminal background registry check;
 - (iv)** complete a minimum of four hours of training in ASD including, but not limited to, training about prevalence, etiology, core symptoms, characteristics, and learning differences prior to the AP billing

for BT services;

(v) complete 40 hours of training (provided by a BA as defined above) with at least 20 hours of training occurring prior to the AP billing for the BT's services, and the other 20 hours accrued no more than 90 calendar days following first submission of billing for the BT's services.

(6) Stage 3

ABA specialty care provider: ~~[Until eligibility requirements for ABA specialty care providers are developed, which will allow others to apply for delivery of ABA specialty care. The center for development and disability at the university of New Mexico, which serves as the state's university center for excellence in developmental disabilities (UCEDD), will function as the ABA specialty care provider for this service. As a mission of the UCEDD, training and technical assistance will be offered, in coordination with direct service delivery, to increase the capacity of APs to serve eligible recipients with significant needs. Through the provision of training and technical assistance, which is an identified mission of the state's UCEDD, it is hoped that the capacity of APs to support eligible recipients with significant needs will be increased, and that reliance on ABA specialty care will ultimately be minimized.] Eligibility requirements for ABA specialty care providers are practitioners who are enrolled as BAs and must provide additional documentation that demonstrates the practitioner has the skills, training and clinical experience to oversee and render ABA services to highly complex eligible recipients who require specialized ABA services.~~

[8.321.2.10 NMAC - N, 1-1-14; A, 5-1-15; A/E, 5-15-15]

REGULATION AND LICENSING DEPARTMENT BOARD OF PHARMACY

This is an amendment to 16.19.6 NMAC, amending Section 25 and adding Sections 27 & 28, effective 06-07-2015.

16.19.6.25 CENTRALIZED PRESCRIPTION DISPENSING: The purpose of these regulations is to provide mandatory standards for centralized prescription dispensing by a retail or nonresident pharmacy.

A. Definitions as used in this section.

(1) "Centralized prescription dispensing" means the dispensing or refilling of a prescription drug order by a retail or nonresident pharmacy.

(2) "Dispensing" as defined in the NMSA, Section 61-11-2(1), and pursuant to 61-11-21(C) dispensing is limited to a registered pharmacist.

B. Operational standards and minimum requirements.

(1) A retail pharmacy may outsource prescription drug order dispensing to another retail or nonresident pharmacy provided the pharmacies:

- (a)** have the same owner or;
- (b)** have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations; and

(c) share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to dispense or process a prescription drug order.

(2) The pharmacist-in-charge of the dispensing pharmacy shall ensure that:

- (a)** the pharmacy maintains and uses adequate storage or shipment containers and shipping processes to ensure drug stability and potency; such shipping processes shall include the use of appropriate packaging material ~~[and/or]~~ and devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process; and

(b) the dispensed prescriptions are shipped in containers which are sealed in a manner as to show evidence of opening or tampering.

(3) A retail or nonresidential dispensing pharmacy shall comply with the provisions of 16.19.6 NMAC and this section.

C. Notifications to patients.

(1) A pharmacy that out-sources prescription dispensing to another pharmacy shall prior to outsourcing the prescription:

- (a)** ~~[prior to out-sourcing the prescription;]~~ notify patients that their prescription may

be outsourced to another pharmacy; and **(b)**

~~[prior to outsourcing the prescription;]~~ give the name of that pharmacy or if the pharmacy is part of a network ~~[pf]~~ of pharmacies under common ownership and any of the network of pharmacies may dispense the prescription, the patient shall be notified of this fact; such notification may be provided through a one-time written notice to the patient or through the use of a sign in the pharmacy; and

~~[(e)]~~ **(2)** if the prescription is delivered directly to the patient by the dispensing pharmacy upon request by the patient and not returned to the requesting pharmacy, the pharmacist employed by the dispensing pharmacy shall ensure that the patient receives written notice of available counseling; such notice shall include days and hours of availability and his or her right to request counseling and a toll-free number from which the patient or patient's agent may obtain oral counseling from a pharmacist who has ready access to the patient's record; for pharmacies delivering more than 50% of their prescriptions by mail or other common carrier, the hours of availability shall be a minimum of 60 hours per week and not less than 6 days per week; the facility must have sufficient toll-free phone lines and personnel to provide counseling within 15 minutes.

D. Prescription labeling.
(1) The dispensing pharmacy shall

~~[(a)]~~ place on the prescription label the name and address or name and pharmacy license number of the pharmacy dispensing the prescription and the name and address of the pharmacy which receives the dispensed prescription;

~~[(b)]~~ **(2)** The dispensing pharmacy shall indicate in some manner which pharmacy dispensed the prescription (e.g., filled by ABC pharmacy for XYZ pharmacy); and

~~[(c)]~~ comply with all other prescription labeling requirements.

E. Policies and Procedures.

(1) A policy and procedure manual as it relates to centralized dispensing shall be maintained at both pharmacies and be approved by the board or its' agent and be available for inspection. Each pharmacy is required to maintain only those portions of the policy and procedure manual that relate to that pharmacy's operations. The manual shall:

- (a)** outline the responsibilities of each of the

pharmacies;

(b) include a list of the name, address, telephone numbers, and all license/ registration numbers of the pharmacies involved in centralized prescription dispensing. [and]

(c) The manual shall include policies and procedures for:

(i) notifying patients that their prescription may be outsourced to another pharmacy for centralized prescription dispensing and providing the name of that pharmacy;

(ii) protecting the confidentiality and integrity of patient information;

(iii) dispensing prescription drug orders when the filled order is not received or the patient comes in before the order is received;

(iv) complying with federal and state laws and regulations;

(v) operating a continuous quality improvement program for pharmacy services designated to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care and resolve identified problems;

(vi) procedure identifying the pharmacist responsible for each aspect of prescription preparation including, but not limited to, the drug regimen review, the initial electronic entry, any changes or modifications to the prescription record or patient profile, and the final check of the completed prescription;

(vii) identify the pharmacist responsible for counseling the patient pursuant to the requirements of 16.19.4.16 NMAC; and

(viii) annually reviewing the written policies and procedures and documenting such review.

F. Records.

(1) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(a) the records maintained in the alternative system contain all of the information required on the manual record; and

(b) the data processing system is capable of producing a hard copy of the record upon request of the board, its' representative, or

other authorized local, state, or federal law enforcement or regulatory agencies within 48 hours.

(2) Each pharmacy shall comply with all the laws and rules relating to the maintenance of records and be able to produce an audit trail showing all prescriptions dispensed by the pharmacy and each pharmacist's or technician's involvement.

(3) The requesting pharmacy shall maintain records which indicate the date:

(a) the request for dispensing was transmitted to the dispensing pharmacy; and

(b) the dispensed prescription was received by the requesting pharmacy, including the method of delivery (e.g., private, common, or contract carrier) and the name of the person accepting delivery.

(4) The dispensing pharmacy shall maintain records which indicate:

(a) the date the prescription was shipped to the requesting pharmacy;

(b) the name and address where the prescription was shipped; and

(c) the method of delivery (e.g., private, common, or contract carrier).
[16.19.6.25 NMAC - N, 06-30-06; A, 06-07-15]

16.19.6.27 [RESERVED]

[16.19.6.27 NMAC - N, 06-07-15]

16.19.6.28 AUTOMATED

FILLING SYSTEMS:

A. Definitions. The following definitions shall apply to this section:

(1) "Automated filling system" means an automated system used by a pharmacy in the state of New Mexico to assist in filling a prescription drug order by selecting, labeling, filling, or sealing medication for dispensing. An "automated filling system" shall not include automated devices used solely to count medication that is then subject to final product check by a pharmacist prior to dispensing, vacuum tube drug delivery systems, or automated dispensing and storage systems used to dispense medication directly to a patient or to an authorized health care practitioner for immediate distribution or administration to the patient.

(2) "Electronic verification system" means an electronic verification, bar code verification, weight

verification, radio frequency identification (RFID), or similar electronic process or system that accurately verifies medication has been properly dispensed and labeled by, or loaded into, an automated filling system.

(3) "Manufacturer unit of use package" means a drug dispensed in the manufacturer's original and sealed packaging, or in the original and sealed packaging of a repackager, without additional manipulation or preparation by the pharmacy, except for application of the pharmacy label.

(4) "Prepacked" means any drug that has been removed from the original packaging of the manufacturer or an FDA repackager and is placed in a properly labeled dispensing container by a pharmacy for use in an automated filling system for the purpose of dispensing to the ultimate user from the establishment in which the prepacking occurred.

(5) "Repackager" means a repackager registered with the United States food and drug administration (FDA).

B. Medication Stocking.

Automated filling systems (hereinafter "system") may be stocked or loaded by a pharmacist or by an intern pharmacist or pharmacy technician under the direct supervision of a pharmacist.

C. Pharmacist

Verification. Except as otherwise provided herein, a licensed pharmacist shall inspect and verify the accuracy of the final contents of any dispensing container filled or packaged by a system, and any label affixed thereto, prior to dispensing, pursuant to Paragraph (1) of Subsection B of 16.19.4.16 NMAC.

D. Verification Criteria.

The pharmacist verification requirements of Subsection C of 16.19.6.28 NMAC shall be deemed satisfied if all the following are met:

(1) pharmacy personnel establish and follow a policy and procedure manual that complies with Subsection E of 16.19.6.28 NMAC;

(2) the filling process is fully automated from the time the filling process is initiated until a completed, labeled, and sealed prescription is produced by the system that is ready for dispensing to the patient; no manual intervention with the medication or prescription may occur after the medication is loaded into the system; for purposes of this section, manual intervention shall not include preparing a finished prescription for mailing, delivery,

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