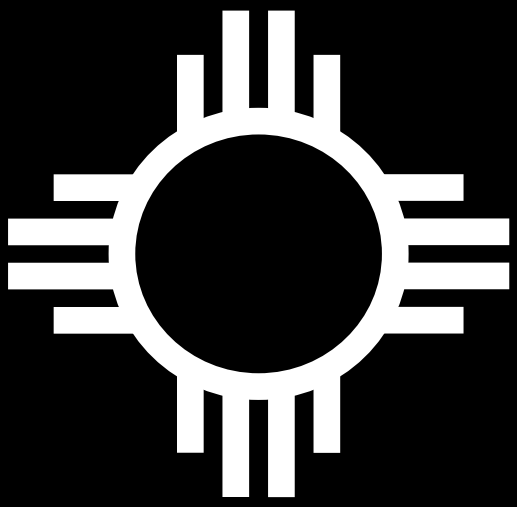
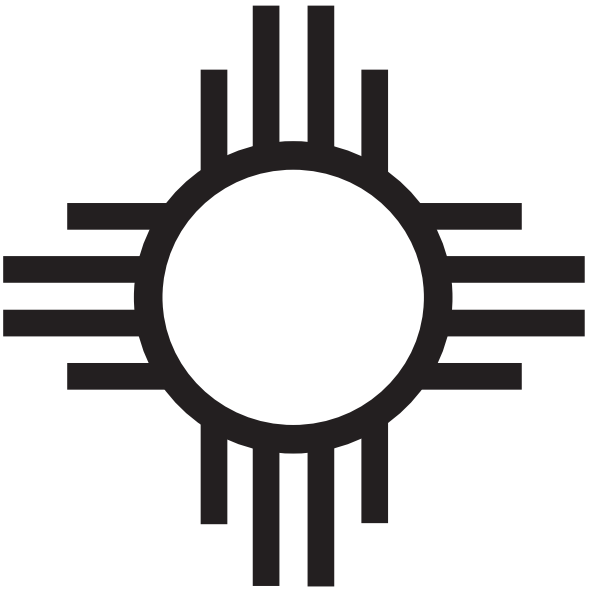
NEW MEXICO REGISTER



Volume XXVI
Issue Number 15
August 14, 2015

New Mexico Register

Volume XXVI, Issue 15
August 14, 2015



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

New Mexico Register

Volume XXVI, Issue 15
August 14, 2015

Table of Contents

Notices of Rulemaking and Proposed Rules

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

The New Mexico Register

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

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

Subscription inquiries should be directed to: The Commission of Public Records,
Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.
Telephone: (505) 476-7942; Fax: (505) 476-7910;
e-mail: staterules@state.nm.us.

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

Notices of Rulemaking and Proposed Rules

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

Notice of Public Hearing

Protective Services Division (PSD) of the Children, Youth and Families Department will hold a public hearing in Santa Fe on Thursday, August 27, 2015 from 10:00 a.m. to 11:30 a.m. at the PERA Building located at 1120 Paseo de Peralta, on the second floor in the large conference room 227, to take comments regarding revisions to the following policies:

- 8.10.2 NMAC "Protective Services Intake"
- 8.10.3 NMAC "Protective Services Investigation"

The PERA building is accessible to people with disabilities. Documents can be available in different formats to accommodate a particular disability upon request by calling 505-412-9597. If assistance is required to attend the hearing, please call 505-412-9597 to arrange accommodation. Written comments are provided the same weight as comments received during the public hearings.

These policies may also be reviewed between 8:00 a.m. to 5:00 p.m. at the Director's office, Room 254, in the PERA building in Santa Fe. Please contact Milissa Soto, PSD Policy and Procedure Coordinator at 505-412-9597 for any further information.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

ENERGY CONSERVATION AND MANAGEMENT DIVISION

Notice of Public Hearing and Rulemaking

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD), Energy Conservation and Management Division will hold a public hearing on proposed rules for the New Sustainable Building Tax Credit Program at 9:15 a.m. on Tuesday, September 1, 2015 in Porter Hall, Wendell Chino Building, 1220 South Saint Francis Drive, Santa Fe, New Mexico. EMNRD is proposing the following rules: 3.4.21 NMAC, New Sustainable Building Tax Credit for Residential Buildings, Corporate Income Taxes; 3.4.22 NMAC, New Sustainable Building Tax Credit for Commercial Buildings, Corporate Income Taxes; 3.3.34 NMAC, New Sustainable Building Tax Credit for Residential Buildings, Personal Income Taxes; and 3.3.35 NMAC, New Sustainable Building Tax Credit for Commercial Buildings, Personal Income Taxes. Proposals to 3.4.21 NMAC include definitions, water conservation requirements, and the setting of the annual cap and tax credits for residential buildings. Proposals to 3.4.22 NMAC include definitions and the setting of the annual cap for tax credits for commercial buildings. Proposals to 3.3.34 NMAC include definitions, water conservation requirements, and the setting of the annual cap and tax credits for residential buildings. Proposals to 3.3.35 NMAC include definitions and the setting of the annual cap for tax credits for commercial buildings.

Copies of the proposed rule changes are available from EMNRD, Energy Conservation and Management Division, 1220 S. Saint Francis Drive, Santa Fe, NM 87505; at www.cleanenergynm.org; or by contacting Ken Hughes at khughes@state.nm.us; telephone (505) 476-3320.

All interested persons may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing.

Those wishing to submit written statements in lieu of providing oral testimony at the hearing, may submit the written statements by August 25, 2015 by 5:00 p.m. by mail or e-mail. Please mail written comments to Ken Hughes, EMNRD, Energy Conservation and Management Division, 1220 S. Saint Francis Drive, Santa Fe, New Mexico 87505 or submit them by e-mail to khughes@state.nm.us. EMNRD will accept no statements after the conclusion of the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ken Hughes at least one week prior to the hearing or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Ken Hughes at 505.476.3320 TTY, if a summary or other type of accessible format is needed.

ENVIRONMENTAL IMPROVEMENT BOARD

Notice of Rulemaking Hearing

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on October 15, 2015 at 9:00 a.m. in Room 307 at the State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 15-01(R), proposed amendments to the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.77 NMAC (New Source Performance Standards), 20.2.78 NMAC (Emission Standards for Hazardous Air Pollutants), and 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants).

The proponent of these regulatory amendments is the New Mexico Environment Department (NMED).

The purpose of the public hearing is to consider and take possible action on a petition from NMED to amend 20.2.77 NMAC, 20.2.78 NMAC and 20.2.82 NMAC by incorporating by reference the new rules, corrections, revisions and amendments to the federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) and Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants (MACT) which were promulgated by the U.S. Environmental Protection Agency (EPA) and published in the Federal Register from the most recent date of incorporation through September 15, 2015.

The proposed revised regulations and the list of federal standards to be incorporated by reference may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico,

on NMED's web site at https://www.env.nm.gov/aqb/prop_regs.html, or by contacting Cindy Hollenberg at (505) 476-4356 or cindy.hollenberg@state.nm.us. You may also contact Cindy Hollenberg if interested in attending an informational open house on the proposed incorporation by reference.

The hearing will be conducted in accordance with 20.1.1. NMAC (Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, Section 74-1-9, the Air Quality Control Act, NMSA 1978, Section 74-2-6, and other applicable procedures.

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. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

(1) Identify the person for whom the witness(es) will testify;
(2) Identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
(3) Include a copy of the direct testimony of each technical witness in narrative form;
(4) List and attach each exhibit anticipated to be offered by that person at the hearing; and
(5) Attach the text of any recommended modifications to the proposed regulatory change.

Notices of intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on September 25, 2015 and should reference the docket number, EIB 15-01(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castañeda, Board Administrator
Environmental Improvement Board
P. O. Box 5469
Santa Fe, NM 87502
Phone (505) 827-2425; Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with that testimony as long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing.

Persons having a disability and needing accommodations to participate in this hearing process should contact Juan Carlos Borrego of the NMED Human Resources Bureau by October 5, 2015 at P. O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-0424 or email juancarlos.borrego@state.nm.us. TDY users, please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

Notice of Public Hearing

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing amendments to 8.291.430 Medicaid Eligibility-Affordable Care of the New Mexico Administrative Code (NMAC). The register and the proposed amendments will be available August 14, 2015, on the HSD website: http://www.hsd.state.nm.us/LookingForInformation/registers.aspx or at: 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 rule may be requested by contacting MAD at (505) 827-7743.

The Department is taking this opportunity to amend 8.291.430 NMAC as follows:

Section 13

Subsection A: new language to provide instructions on determining household members; and

Subsection D: new language to recognize same-sex married couples as spouses for purposes of making a MAP category of eligibility determination.

Section 14

Subsection B: new language to provide instructions on defining the basis for a MAGI-based income of an applicant's or a recipient's dependent's income.

Section 15

Subsection B: deleting Paragraph 4 as this language is incorporated in other sections of this rule.

The Department proposes to have 8.291.430 NMAC effective November 1, 2015. A public hearing to receive testimony on these proposed rules will be held in Hearing Room One, Toney Anaya Building, 2550 Cerrillos Road Santa Fe, NM on September 14, 2015, 10 a.m. Mountain Daylight Time (MDT).

Interested parties may submit written comments directly 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 by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than September 14, 2015, 5:00 p.m. MDT.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-7743. 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 by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

COMMISSION OF PUBLIC RECORDS

Notice Of Rule Hearing

The State Records Administrator of the New Mexico Commission of Public Records, or designee, will hold a public hearing on Tuesday, September 22, 2015, at 9:00 a.m. to take public comment regarding the following proposed rulemaking actions:

Repeal and Replace
1.13.10 NMAC Records Custody, Access, Storage and Disposition
1.13.30 NMAC Destruction of Public Records and Non-Records

New Rule
1.21.3 NMAC Local Government Records Retention and Disposition Guide

Amendment
1.13.4 NMAC Records Management Requirements for Electronic Messaging
1.24.10 NMAC New Mexico Administrative Code
1.24.15 NMAC New Mexico Register

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 September 18, 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.nmcpr.state.nm.us and available at the office of the State Records Administrator located at 1205 Camino Carlos Rey, Santa Fe, NM 87507. Public documents, including the proposed rules and the agenda, can be provided in various accessible formats. The agenda is subject to change up to 72 hours prior to the meeting.

The hearing will be held at the State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Joseph Lovato at 476-7902 as early as possible.

REGULATION AND LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION

Legal Notice
Public Rule Hearing

The New Mexico Construction Industries Division will hold a Rule Hearing on Monday, September 14, 2015. The New Mexico Construction Industries Division Rule Hearing will begin at 9:00 a.m. and adjourn no later than 3:00 p.m. The Rule Hearing will be held at the Regulation and Licensing Department, Construction Industries Office, 5500 San Antonio Dr. NE, Albuquerque, NM, 87109.

The purpose of the rule hearing is to consider purposed rule changes to the 14.6.6 NMAC, Sections 7, 8 & 9 Definitions, General Information, and General Construction Classifications.

You can contact the Division office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87504, call (505) 476-4674 or copies of the proposed rules are available on the Division's website: www.RLD.state.nm.us. In order for the Bureau Chief to review the comments in the meeting packet prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Division office in writing no later than September 4, 2015. Persons wishing to present their comments at the hearing will need five (5) copies of any comments or proposed changes for distribution to the Commission and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Division office at (505) 476-4674 at least two weeks prior to the meeting or as soon as possible.

STATE GAME COMMISSION

State Game Commission Meeting and Rule Making Notice

On **Thursday, August 27, 2015**, beginning at 8:30 a.m., at the **Santa Fe Community College Jemez Rooms**, located at **6401 Richards Avenue, Santa Fe, NM**, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: Bear and Cougar Rule Final Proposals, Turner Endangered Species Fund Appeal of the Denial to Renew Department Permit #3443 for Mexican Gray Wolves, Turner Endangered Species Fund Appeal of the Denial to Amend Department Permit #3443 to Receive Mexican Gray Wolves, United States Fish and Wildlife Service Appeal of the Denial of Application to Release Mexican Gray Wolves, Valles Caldera National Preserve Management Strategies for Elk and Turkey, State Land Easement Agreement, Revocations, Penalty Assessment Violations Final Proposals for Manner and Method, Migratory Bird Rule Final Proposals to NMAC for the 2015-2016 Season, Closed Executive Session, Initiation of Fisheries Management Plan, Potential Acquisition of Properties in Southwest and Northwest New Mexico, Greenwood Area Access Agreement with Vermejo Park Ranch, Final Proposal to Amend Importation and Possession of Tilapia and Other Fish - 19.35.7 and 19.35.9 NMAC, Final Proposal to Amend Permits and Licensing Rule – 19.30.9 NMAC, Fiscal Year 2017 Operating Budget Approval, and Prospective Initiatives for the 2016 Legislative Session.

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

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

Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

End of Notices of Rulemaking and Proposed Rules

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.

DEPARTMENT OF FINANCE AND ADMINISTRATION
BOARD OF FINANCE

This is an amendment to 2.60.8 NMAC, Part Name and Sections 1, 2, 3, 6 through 10, effective 8-14-2015.

PART 8 ACCEPTANCE OF [~~CREDIT/DEBIT~~] PAYMENT CARDS AND USE OF ELECTRONIC FUNDS TRANSFERS

2.60.8.1 ISSUING AGENCY: State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM [~~87503~~] 87501.
[2.60.8.1 NMAC - N, 8-31-2000; A, 8-14-2015]

2.60.8.2 SCOPE: State agencies with respect to acceptance of [~~credit/debit~~] payment cards and all public bodies with respect to electronic fund transfers. These regulations do not apply to procurement cards issued [~~by agencies and~~] to agencies for procurement of goods and services or to travel cards issued by the state general services department.
[2.60.8.2 NMAC - N, 8-31-2000; A, 8-14-2015]

2.60.8.3 STATUTORY AUTHORITY:

A. Article IV, Section 30 of the New Mexico state constitution states that no money shall be paid out of the treasury except upon warrant drawn by the proper officer.

B. Section 6-10-1.2 NMSA 1978 provides that a state agency may accept payment by credit card or electronic means of any amount due the state under any law or program administered by the agency and that the state board of finance shall adopt rules on the terms and conditions of accepting payments by credit card or electronic transfer. A state agency may charge a uniform convenience fee to cover the approximate costs imposed by a financial institution that are directly related to processing a credit card or electronic transfer transaction. The fee shall be charged to the person using the credit card or electronic transfer, and amounts collected are appropriated to the state agency to defray the cost of processing the transaction.

C. Section 6-10-35 NMSA 1978 provides that the state board of finance may designate a bank or savings and loan association as the "fiscal agent of New Mexico" and to act as the agent of the state in fiscal matters generally, subject to the supervision and approval of the state board of finance.

D. Section 6-10-46 NMSA 1978 states that all payments and disbursements of public funds of the state [~~of New Mexico~~] shall be made upon warrants drawn by the secretary of [~~the department of~~] finance and administration, upon the treasury of the state [~~of New Mexico~~], based upon itemized vouchers [~~as provided by law~~] in a form approved by the secretary of finance and administration.

E. Section 6-10-63 NMSA 1978 provides that any public money may be transferred by means of electronic fund transfer between any public body and a public or private entity and that the state board of finance shall adopt rules and regulations to carry out this purpose.
[2.60.8.3 NMAC - N, 8-31-2000; A, 8-14-2015]

2.60.8.6 OBJECTIVE: This rule provides general guidance regarding the financial and legal requirements for acceptance of [~~credit/debit~~] payment cards through the state's fiscal agent bank and any approved third-party processor and the use of electronic fund transfers.
[2.60.8.6 NMAC - N, 8-31-2000; A, 11-27-2002; A, 8-14-2015]

2.60.8.7 DEFINITIONS:

A. "Agency" means each department, agency, branch, commission, and board of government of the state of New Mexico.

B. "Board" means state board of finance.

[~~C.~~ ~~"Credit/debit card" means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services. Cards must be authorized and accepted by the fiscal agent per the state's fiscal agent and merchant agreement and pursuant to current contracts between credit card companies and the board.~~]

[~~**D.**~~] **C.** "Electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

D. "Fiscal agent" means the bank or savings and loan association designated as the fiscal agent of New Mexico by the board.

E. "Fiscal agent agreement" means the agreement between the board and the fiscal agent [~~bank~~] that defines the terms, conditions, and procedures of the fiscal agent designation. The fiscal agent agreement includes a merchant agreement that addresses the terms and conditions for use of payment cards.

F. [~~"Merchant agreement" means the section of the fiscal agent agreement that addresses the terms and use of credit/debit cards.~~] "Payment card" means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services. Cards must be authorized and accepted by the fiscal agent per the state's fiscal agent agreement and pursuant to current contracts between

payment card companies and the board. Payment cards are linked to a cardholder's deposit account, credit account, or loan account. Payment cards may include credit cards, debit cards, stored-value cards, and other similar cards.

G. "Payment gateway" means a service of the fiscal agent that allows members of the public to make payments by payment card to an agency using the agency's website, via touch-tone or, where available, voice commands over the telephone.

H. "Public body" means any department, board, agency or instrumentality of the state, any county, city, town, village, school district, other district, educational institution or any other governmental agency or political subdivision of the state.

I. "Third-party processor" means a payment card processor of transactions on behalf of an agency that is not the fiscal agent.

[2.60.8.7 NMAC - N, 8-31-2000; A, 11-27-2002; A, 8-14-2015]

2.60.8.8 AGENCY RESPONSIBILITIES [~~IN CREDIT/DEBIT CARD~~] AND REQUIREMENTS FOR BOARD APPROVAL OF PAYMENT CARD ACCEPTANCE

A. [~~Credit/debit~~] Payment card services will be provided through the [~~state's~~] fiscal agent subject to the terms and conditions as set out in the fiscal agent agreement and the board's agreements with [~~the~~] individual [~~credit~~] payment card companies, through an agreement between an agency and a third-party processor if approved by the board, or through a statewide payment card acceptance system, if established.

[~~**B.** All costs associated with credit/debit card acceptance will be paid for by the agency to the fiscal agent pursuant to the fiscal agent agreement.~~

~~**C.** The agency shall determine if initiators of transactions will pay transaction fees or if the agency will absorb fees.~~

~~**D.** Any merchant equipment to be purchased or leased by an agency requesting credit/debit card services shall be paid for by that agency pursuant to a separate agreement between that agency and the fiscal agent or an approved processor.~~

~~**E.**~~] **B.** Agencies requesting [~~credit/debit~~] payment card acceptance shall submit to the director of the board a written request that contains the following:

(1) reason for [~~credit/debit~~] payment card services and the specific fees, taxes, or other amounts to be collected using payment cards;

(2) confirmation that the agency has read and will follow the terms and conditions for [~~credit/debit~~] payment card acceptance as set out in the fiscal agent agreement or statewide payment card acceptance system agreement, if established, and the board's agreements with [~~the~~] individual [~~credit~~] payment card companies;

(3) confirmation that the agency will pay all costs associated with the acceptance of [~~credit/debit~~] payment card services, including purchases or leases of merchant equipment, as set out in the fiscal agent agreement and any agreement with an approved third-party processor, and including any assessment charged by the state to cover the cost of compliance with payment card industry data security standards; [~~If fees are paid by the cardholder, this should be so stated by the agency and the procedures used to charge and collect fees from cardholders should be specified.~~]

(4) confirmation that the agency will be responsible for tracking, researching and recording all payment card transactions for reconciliation purposes;

(5) confirmation that any acceptance of payment cards through the internet shall be done in a secure fashion and on a secure system;

(6) confirmation in writing from the department of information technology that the agency's acceptance of payment cards will meet data security standards of the payment card industry;

(7) confirmation that the agency's chief financial officer and chief information officer will cooperate with the board to ensure compliance with payment card industry data security standards;

(8) whether the agency will absorb fees for acceptance of payment cards or cardholders will be assessed a convenience fee. If fees are to be paid by the cardholder, provide the procedures used to charge and collect convenience fees from cardholders and confirmation that the convenience fee will be in compliance with Section 6-10-1.2(B) NMSA 1978, as amended;

(9) if the agency wishes to use a third-party processor, a copy of the third-party processor agreement with the agency and the reasons why use of a third-party processor is more advantageous for the agency than using the fiscal agent. If the third-party processor agreement with the agency is not yet available at the time board approval for acceptance of payment cards is requested, the board director may condition any approval on the board director's later review and approval of the third-party processor agreement;

(10) if the agency wishes to use payment gateway through the fiscal agent agreement, a comparison of the costs and benefits of using payment gateway to traditional payment card services, including breakdown of fees to be paid by the board, the agency, and cardholders.

[~~**F.** Each agency is responsible for tracking, researching and recording all credit/debit card transactions for reconciliation purposes.~~

~~**G.** Acceptance of credit/debit cards from the internet shall be done in a secure fashion and on a secure system.~~

~~**H.**~~] **C.** The board, in consultation with the fiscal agent, may, at any time, deny acceptance of [~~credit/debit~~] payment cards by or revoke approval to an agency through the fiscal agent agreement. The reasons for denial or revocation may include, but are not limited to, the following:

(1) cost effectiveness;

(2) illegal or misuse of [~~credit/debit~~] payment card transactions;

(3) failure to adhere to the terms and conditions of these regulations, the fiscal agent agreement [~~and merchant agreement,~~] payment card industry data security standards, or the board's agreements with [~~the~~] individual [~~credit~~] payment card companies;

(4) repeated lapses in compliance or security.

[~~**I.**~~] **D.** [~~If an agency wishes to use a third part processor (other than the fiscal agent), the agency shall include in its submittal to the director of the board a request stating its desire to do so, including the reasons for the request.~~] Reasons for denial of use of a third-party processor may include, but are not limited to, the reasons specified in [~~subsection H~~] Subsection C of 2.60.8.8. In addition, upon approval, the agency's agreement with the third-party processor must be approved by the board's director to ensure compliance with the fiscal agent agreement [~~, the merchant agreement~~] and the board's agreements with [~~the~~] individual [~~credit~~] payment card companies. In the event there is no current agreement between the board

and a particular [~~credit/debit~~] payment card company, the board's director may authorize an agency's [~~third party~~] third-party processor to process payment cards issued by that company under the terms and conditions of the third-party processor's own contract with the company as long as there is no discount imposed on or deduction from the entire amount due and owing to the agency and paid by the cardholder (except for any convenience fee paid by the cardholder in addition to the amount owed), which amount shall be transferred by the third-party processor to the agency.
[2.60.8.8 NMAC - N, 8-31-2000, A, 11-27-2003; A, 7-15-2003; A, 8-14-2015]

2.60.8.9 RESPONSIBILITIES FOR [~~CREDIT/DEBIT~~] PAYMENT CARD ACCEPTANCE

A. The fiscal agent [~~bank~~] shall provide [~~credit/debit~~] payment card services, upon written request by the director of the board, to any agency so requesting subject to the terms and conditions set out in the fiscal agent agreement [~~and merchant agreements~~] and [~~the~~] individual [~~credit~~] payment card [~~companies~~] company agreements with the board.

B. The charge to an agency for [~~credit/debit~~] payment card services will be the fee designated in the fiscal agent agreement or that set out in the approved third-party processor's agreement. The fiscal agent shall bill the appropriate agency through account analysis performed by the fiscal agent in accordance with the relevant provisions of the fiscal agent agreement. At the end of each fiscal year, the fiscal agent [~~bank~~] shall submit a report to the board [~~staff~~] director summarizing the [~~credit/debit~~] payment card fees and merchant equipment costs charged to each [~~of the user agencies~~] agency for that fiscal year. Each agency will be responsible for all [~~processing fees or charges~~] fees as set out in [~~the~~] any approved third-party processor's agreement with the agency [~~, if any~~].

C. Agencies may be assessed an incremental charge to cover the cost of compliance with payment card industry data security standards.
[2.60.8.9 NMAC - N, 8-31-2000; A, 11-27-2003; A, 8-14-2015]

2.60.8.10 ELECTRONIC FUND TRANSFERS

A. Public bodies requesting authorization for use of electronic fund transfers must submit to the directors of the financial control division of the department of finance and administration and the board a letter explaining the reason for the use of electronic fund transfers and the fund for which it is to be used. Public bodies may [~~use~~] only initiate electronic fund transfers [~~only upon~~] after receiving written authorization by the financial control division of the department of finance and administration.

B. Electronic fund transfers can only occur after [~~authorized warrants have been received by the fiscal agent bank from the financial control division of the department of finance and administration. Types of warrants may include electronic warrants, paper warrants, or any other forms of warrants as authorized by the financial control division~~] notification of the state treasurer's office of the amount of the transfer.

C. The state treasurer and each public body is responsible for the tracking of and the accounting for all electronic fund transfers. The reconciliation process is the responsibility of the public body and the financial control division of the department of finance and administration.
[2.60.8.10 NMAC - N, 8-31-2000; A, 8-14-2015]

DEPARTMENT OF FINANCE AND ADMINISTRATION

BOARD OF FINANCE

This is an amendment to 2.61.6 NMAC, Sections 8 through 10, effective 08-14-2015.

2.61.6.8 INTERPRETATION OF AUTHORIZING LANGUAGE:

A. In accordance with New Mexico law, bond proceed expenditures shall not be made for purposes other than those specified in an appropriation and any other relevant law, and must meet the definition of capital expenditure unless otherwise authorized by law. It is crucial to determine whether the purpose for a draw request falls within an appropriation's permitted use. The following provides general direction and clarification in the interpretation of authorizing language. Agencies may also refer to the Uniform Statute and Rule Construction Act, 12-2A NMSA 1978 for guidance.

(1) Straight-forward language - some appropriation language is relatively unambiguous, either because it is quite specific or quite general, and it should not be difficult to determine whether the draw request falls within the appropriation language. The following examples use both specific and general language.

(a)
"To purchase a van" - the specificity would not permit the purchase of a bus or truck or multiple vans. Using the appropriation to prepay rent on a leased vehicle would not be permitted.

(b)
"For (a jail, an engineering study, specific type of equipment, etc.)" - "for" permits the broadest interpretation of the items that could be covered. The words act as a substitute for a particular verb or verbs that might raise interpretive questions or otherwise limit the use of funds. For example, "for a jail" could include purchasing an existing building, purchasing real estate, demolition, the planning and designing, constructing, equipping, furnishing and all other things of capital nature incident to completing the jail.

(2) Standard appropriation language - appropriation language uses certain verbs routinely to anticipate how appropriations will be applied. In order for agencies to be able to make draw requests with certainty based on frequently used verbs or combinations thereof, the following are the board's interpretations of frequently used verbs in authorizing language.

(a)
Acquire - obtain something already in existence; does not mean to construct, build or otherwise create the thing to be acquired.

(b)
Build - construct a structure or space including fixtures and other built-ins, but not including furnishings or moveable equipment; may include demolition and the design and planning process but does not include acquisition of underlying land; may include the use of modular and prefabricated buildings; may include the cost of commissioning a building for energy efficient green building standards (i.e. LEED certification), as required by law; used interchangeably with "construct".

(c)
Construct or construct improvements - see "build".

(d)
Design - planning process including location and feasibility studies, architectural drawings and plans, engineering, archaeological and environmental surveys or clearances,

zoning, design activities necessary if seeking LEED certification, and all other steps incident to creating a plan for a final product.

(e)

Develop - establish the process for future implementation of a project; similar to "design" however less tangible and more conceptual.

(f)

Equip or equip improvements - supply tools, furnishing and other implements that are of a permanent or non-depletable nature and are reasonably necessary in the use of the building or other asset for its intended purpose; for example: wood chips and shade structures for playgrounds; used interchangeably with "furnish" (however the nouns "equipment" and "furniture" have different meanings, the former referring to mechanical, technological or recreational items, while the latter is generally limited to objects necessary to make a room comfortable).

(g)

Expand - increase size or capacity.

(h)

Feasibility study - a preliminary study undertaken to determine and document a project's viability, the results of which are used to make a decision whether or not to proceed with the project.

(i)

Furnish - is generally interpreted to mean provide furniture for a building; however, may be used interchangeably with "equip" to mean the provision of items essential for the use of a building or asset for its intended purpose.

(j)

Furniture - see "furnish".

(k)

Governmental entity - a public body such as state agencies, cities, counties, school districts (including charter schools), governmental instrumentalities created by statute.

(l)

Improve - enhance the quality or function of something; encompasses "construct", "equip", "remodel", "renovate" and "upgrade"; may include items such as the purchase of books and desks for a library.

(m)

Information technology - includes hardware, software when the software is needed for the intended use of the facility and is a one-time expense, wiring, cooling (where necessary) and related costs, but does not include remodeling, space dividers or other furniture; does not include consumables such as toner, batteries, CD-ROMs, etc, unless included as part of the package or otherwise allowed.

(n)

Install - bring into service, including necessary labor and parts directly related to the installation, but does not include the cost of the item actually being installed.

(o)

Plan - see "develop".

(p)

Prepare - make ready for a future purpose, use or activity.

(q)

Purchase - see "acquire".

(r)

Remodel - see "improve".

(s)

Renovate - see "improve".

(t)

Repair - return to usefulness.

(u)

Replace - substitute with identical or similar item.

(v)

Upgrade - see "improve".

B. Special meanings in road/street context - Unless specifically limited by the legislature, "to improve a road" includes anything that will make the existing road better and is deemed appropriate in the discretion of the agency responsible for the project, and could include acquisition of rights-of-way. However, the department of transportation has taken the position that "to construct a road" does not include planning, designing, right-of-way activities and acquisition, environmental documentation, environmental clearances, and other pre-construction project development tasks. Preliminary activities such as those would only be included if the legislature specified for "planning and designing."

C. Training of government employees - if training is purchased from the vendor or other third party in connection with the acquisition of any permitted property, which training is necessary to the initial use of the property, the appropriation may be used for such training costs. However, no part of the appropriation shall be used to pay for the salaries or wages of government employees during training, or travel costs for government employees to attend training.

D. Litany - when multiple verbs are listed in the appropriation, assume that they are used deliberately and to the exclusion of those not listed. When "and" is used in a list, the appropriation must be applied to all the purposes listed, unless the appropriation act provides that when the amount appropriated is not enough to pay for all the purposes listed, the funds may be expended on fewer than all of them. When "or" is used, the appropriation may be applied to any or all of the purposes listed.

E. Unusual or special appropriation language - if the appropriation language is not clear, the following interpretation guidelines may be helpful. Technical term - determine whether a technical term or term of art has an established meaning within a particular field, industry or context, such as the following examples:

(1) Software" - software that is a one-time expenditure if necessary for intended use of hardware;

(2) Accounting term - if the term is commonly thought of as an accounting term, apply generally accepted accounting principles (GAAP) and government accounting standards board (GASB) interpretations;

(3) Tax term - if the term is commonly thought of as a tax term, consult the Internal Revenue Code for meaning.

F. Errors in appropriation language - if the entity, location or object erroneously referenced in the appropriation actually exists, then the funds cannot be applied otherwise, regardless of a suspected different legislative intent. If the entity, location or object erroneously referenced in the appropriation is non-existent, then the funds can be applied to the appropriate cause, if there is sufficient evidence that was the intended use.

G. Other considerations - the interpretations must make sense and not violate applicable law.

(1) Avoid unconstitutional results:

(a)

Anti-donation - the appropriation cannot be given to a non-governmental entity; the item to be purchased or constructed must be owned by a governmental entity.

(b)

Control of state - no appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state.

(2) Consider the appropriation in terms of the current context/situation of a project.

(3) Favor an interpretation that would make full use of the appropriation and avoid unachievable results.

(4) Assess the sufficiency of funds to support

the interpretation (however, if an appropriation for a project is not sufficient to complete all the purposes specified, the appropriation may be expended for any portion of the purposes specified in the appropriation, if the appropriation act so states).

(5) Avoid interpretations that may jeopardize any tax-exempt bonds issued to finance the appropriation:

(a) Capital expenditure - appropriations should be used for a capital expenditure.

(b) Private use - if the item acquired or created will be used principally by one or a few private sector entities (including a non-profit organization) this should be brought to the attention of the board, unless previously discussed.

[~~**(c)** Reimbursement and refinancing - if the funds are to be used to reimburse an expense paid prior to the issuance of the bonds, or to pay off a loan used to pay for such expense, this should be brought to the attention of the board, unless previously discussed. Generally the look back period for reimbursement is 60 days prior to the date a bill is approved by the governor (severance tax bonds) or approved by the voters (general obligation bonds).~~]

(6) Operating expenses - unless expressly provided for by statute, bond proceeds may not be used to pay for operating expenses (e.g. salaries and in-house labor).

(7) Indirect expenses - generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

H. Interpretive memoranda - in order to develop consistency in interpretations, the board will document specific interpretive decisions that arise. The interpretive memoranda will be provided to agencies making draw requests based on interpreting language, and may be relied on for future interpretations of the same or similar terms.

[2.61.6.8 NMAC - N, 02-28-02; A, 01-15-09; A, 10-15-09; A, 08-14-15]

2.61.6.9 PAYMENT OF CAPITAL PROJECT EXPENSES, DRAW REQUEST PROCEDURES:

A. The recipient of bond proceeds is the governmental entity that will carry-out the completion of the project. In many cases, the agency named to receive the appropriation will also be the entity responsible for the project. In other cases, the named agency will be an intermediate agency that is expected to make a grant to a local government entity to carry out the completion of the project. Either an intermediate agency may make a draw request to the board on behalf of a local government entity as recipient, or an agency itself as recipient may make the request directly to the board, unless otherwise approved by the board director.

(1) Documentation to support draw requests from agency:

(a) one draw request form for each project (1 original and 2 copies);

(b) proof of payment - notarized certification from an authorized signatory that expenditures are valid or actual receipts;

(c) evidence that conditions have been satisfied if applicable;

(d) certification that the statements made in the original certification and questionnaire remain true, including use of facility;

(e) additional documentation to be submitted for requests by state educational institutions:

(i) if the capital project only requires higher education department approval, a higher education department approval letter;

(ii) if the capital project requires both higher education department and board approval, a higher education department approval letter and a copy of the board action sheet;

(iii) if the capital project does not require higher education department approval, a higher education department project review approval verification.

(2) Intermediate agencies typically submitting draw requests to the board on behalf of local entity recipients: Environment department, department of transportation, Indian affairs department, local government division, public education department, higher education department and aging and long term services department:

(a) one draw request form for each project (1 original and 2 copies);

(b) proof of payment - a notarized certification from an authorized signatory that expenditures are valid or actual receipts;

(c) evidence that conditions have been satisfied if applicable;

(d) certification that the statements made in the original certification and questionnaire remain true, including use of facility.

B. Frequency - draw requests are due in the board [~~of finance~~] office by 3:00 p.m. on the 1st and 15th day of each month or by 9:00 a.m. the next business day if the 1st or 15th falls on a weekend or holiday (the "draw request deadline"). Draw requests submitted on or before the draw request deadline will result in funds available six business days after the draw request deadline.

C. The minimum draw request amount per project shall be $1,500 unless it is the final draw request or otherwise recommended by the intermediate agency.

D. State executive agencies may request a direct payment to a contractor or other entity.

(1) The agency must submit the payment voucher to department of finance and administration financial control division six business days after the board [~~of finance~~] deadline unless notified by the board [~~of finance~~] of processing delay due to additional information or legal review being required.

(2) If a direct payment to a contractor or other entity is requested and the agency mails the payment directly to the payee or transfers the funds electronically via automated clearing house (ACH), the agency must send state treasurer's office a copy of the warrant or a copy of the ACH no later than two business days after the payment has been made.

[2.61.6.9 NMAC - N, 02-28-02; A, 01-15-09; A, 10-15-09; A, 06-28-13; A, 08-14-15]

2.61.6.10 ART IN PUBLIC PLACES (AIPP) ACT:

A. A portion of appropriations for construction and major renovations shall be set aside for the acquisition or commissioning of works of art to be used in, upon or around public buildings.

(1) "Appropriations for construction and major renovations" include appropriations for that purpose to any public entity from

severance tax bonds, general obligation bonds, or supplemental severance tax bonds, both taxable and tax-exempt.

(2) Under the AIPP Act, all agencies shall set aside the lesser of $200,000 or one percent of the amount appropriated for new construction or major renovation (exceeding $100,000) to use for art in, upon or around the building being constructed or renovated. In addition, an amount of money equal to the lesser of $200,000 or one percent of the amount appropriated for new construction or major renovations of auxiliary buildings, as defined in the AIPP Act, shall be accounted for separately and expended for acquisition and installation of art for existing public buildings, as defined.

B. The board's role in administering the AIPP Act is as follows.

(1) After each bond issue, the board submits a list of approved projects to the arts division of the department of cultural affairs, which administers the AIPP fund. The arts division determines which projects the AIPP Act applies to and advises the board accordingly. Based on that determination, the board sets aside the requisite amount from each applicable project in a separate AIPP pooled fund for each bond issue.

(2) When the arts division of the department of cultural affairs is ready to purchase or commission art, the office submits a draw request to the board which then makes the disbursement out of the AIPP project.

C. Frequency - Draw requests are due in the board [~~of finance~~] office by 3:00 p.m. on the 1st and 15th day of each month or by 9:00 a.m. the next business day if the 1st or 15th falls on a weekend or holiday (the "draw request deadline"). Draw requests submitted on or before the draw request deadline will result in funds available six business days after the draw request deadline.

[2.61.6.10 NMAC - N, 02-28-02; A, 01-15-09; A, 10-15-09; A, 06-28-13; A, 08-14-15]

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

8.281.500 NMAC, Income and Resource Standards, (filed 02/15/2001) is being repealed and replaced by 8.281.500 NMAC, Income and Resource Standards, effective 08/15/2015.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 281 MEDICAID ELIGIBILITY - INSTITUTIONAL CARE (CATEGORIES 081, 083, 084)
PART 500 INCOME AND RESOURCE STANDARDS

8.281.500.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.281.500.1 NMAC - Rp, 8.281.500.1 NMAC, 8-15-15]

8.281.500.2 SCOPE: The rule applies to the general public.
[8.281.500.2 NMAC - Rp, 8.281.500.2 NMAC, 8-15-15]

8.281.500.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq. NMSA 1978.
[8.281.500.3 NMAC - Rp, 8.281.500.3 NMAC, 8-15-15]

8.281.500.4 DURATION: Permanent.
[8.281.500.4 NMAC - Rp, 8.281.500.4 NMAC, 8-15-15]

8.281.500.5 EFFECTIVE DATE: August 15, 2015, unless a later date is cited at the end of a section.
[8.281.500.5 NMAC - Rp, 8.281.500.5 NMAC, 8-15-15]

8.281.500.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs it administers. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) medical assistance programs (MAP) eligibility rules manual, specifically 8.200.400 NMAC. Processes for establishing and maintaining MAP eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC.
[8.281.500.6 NMAC - Rp, 8.281.500.6 NMAC, 8-15-15]

8.281.500.7 DEFINITIONS:

A. Actuarially sound: With respect to an annuity or promissory note, the payments made to the beneficiary must not exceed his or her life expectancy and returns to the beneficiary an amount at least equal to the amount used to establish the contract.

B. Annuity: A financial instrument, usually sold by a life insurance company, that pays out a regular income at fixed intervals for a certain period of time, often beginning at a certain age and continuing for the life of the owner.

C. Asset limit: An applicant or recipient may be eligible for a MAP category of institutional care on the factor of resources if countable resources do not exceed $2,000.

D. Assets: All income and resources of an applicant or recipient and his or her spouse, if applicable.

E. Authorized representative: The individual designated to represent and act on the applicant's or recipient's behalf during the eligibility process. The applicant or recipient or his or her authorized representative must provide formal documentation authorizing the named individual or individuals to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian, or any other individual or individuals designated in writing by the claimant.

F. Bona fide: A bona fide agreement is made in good faith and is legally valid.

G. Community spouse: The spouse of an institutionalized applicant or eligible recipient who is residing in the community and is not in an institution.

H. Community spouse resource allowance (CSRA): An amount of a married couple's resources that is set aside for the community spouse when the eligible recipient is institutionalized. There is a MAD minimum and a federal maximum amount of resources that can be set aside for the community spouse.

I. Encumbrance: A general term for any claim or lien on a parcel of real property, including mortgages, deeds of trust and abstracts of judgments.

J. Fair market value: An estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria used in appraising the value of assets for the purpose of determining a

MAP category of eligibility.

K. Home equity: (Also known as equity value.) The value of a home minus the total amount owed on it in mortgages, liens and other encumbrances.

L. Income: Anything that an applicant or recipient receives in cash or in kind that he or she can use to meet his or her needs for food and shelter. In-kind income is not cash, but is actual food or shelter, or something that the applicant or recipient can use to get one of these.

M. Institutionalized spouse: An applicant or recipient who is in an acute care hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities (ICF-IID), swing bed or certified in-state inpatient rehabilitation center.

N. Life estate: An interest in property that exists for the life of a person. For example, an individual gives a life estate in a house to person A and the remainder to person B. Person A has a life estate and person B has a remainder interest until person A dies.

O. Liquid resource: Cash or something that can easily be converted to cash within 20 business days.

P. Loan: A transaction in which one party advances money to, or on behalf of another party, who promises to repay the lender in full, with or without interest.

Q. Long-term Care Insurance Policy: A type of insurance developed specifically to cover the costs of nursing homes, assisted living, home health care and other long-term care services as specified in the individual's policy.

R. Lookback period: A period of time in the past through which the ISD caseworker may examine all financial transactions for asset transfers.

S. Minimum monthly maintenance needs allowance: A minimum level of income that the federal government allows to be set aside for the support of the community spouse when the other spouse is in an institution.

T. Negotiable agreement: An agreement (i.e., a loan) in which the ownership of the agreement and the whole amount of money can be transferred from one person to another.

U. Non-liquid resource: An asset such as real property, which cannot be easily converted to cash within 20 days.

V. Promissory note: A promissory note is a written, unconditional agreement in which one person promises to pay a specified sum of money at a specified time to another person.

W. Protected Asset Limit: Protected assets up to the amount of qualified long-term care insurance partnership (QLTCPI) benefit payments made to or on the behalf of individual. This is the applicant's or recipient's protected asset limit (PAL).

X. Qualified long-term care insurance partnership (QLTCPI) program: A partnership program that joins MAD with private insurance companies that offer long-term care insurance policies. The MAP eligibility requirements are adjusted to provide financial incentives for eligible recipients to purchase private QLTCP coverage.

Y. Relative: Relative is defined as a spouse, son or daughter; grandson or granddaughter; step-son or step-daughter; in-laws; mother or father; step-mother or step-father; half-sister or half-brother; grandmother or grandfather; aunt or uncle; sister or brother; step-brother or step-sister; and niece or nephew.

Z. Remainder/ remainder man: An interest in property that occurs after a life estate. For example, an individual gives a life estate in a house to person A and the remainder to person B. Person A has a life estate and Person B has a remainder interest until person A dies. Person B is also called the remainderman.

AA. Resources: Cash or other liquid assets and any real or personal property that applicant or recipient (or spouse if any) owns and could convert to be used for his or her support and maintenance.

BB. Restricted coverage: An eligible recipient who has restricted coverage may access medically necessary MAD benefits except for long-term care services in a nursing facility.

CC. Reverse mortgage: A loan against home equity providing cash advances to a borrower and requiring no repayment until a future date.

DD. Sole benefit of: A transfer is considered for the sole benefit of a spouse, blind or disabled child, or a disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind, or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

EE. Spouse: For purposes of this rule, a spouse is an individual who is legally married under the laws of a state, a territory, or a foreign jurisdiction in which the marriage was celebrated.

FF. Transfer: To change over the possession, control or ownership of something.

[8.281.500.7 NMAC - Rp, 8.281.500.7 NMAC, 8-15-15]

8.281.500.8 [RESERVED]

8.281.500.9 NEED DETERMINATION: Applicants for and recipients of institutional care must apply for and take all necessary steps to obtain any income or resources to which they may be entitled. When an applicant or recipient is given notification by HSD to apply for and obtain specific income and resources they must take steps to do so within 30 calendar days.

A. Failure to apply for and take steps to determine eligibility for other benefits: Failure or refusal to apply for and take all necessary steps to determine eligibility for other benefits after notice is received results in an applicant or recipient becoming ineligible for a MAP category of eligibility for institutional care.

B. Exceptions to general requirement: Applicants or recipients who have elected a lower veterans administration (VA) payment do not need to reapply for veterans administration improved pension (VAIP) benefits. Crime victims are not required to accept victims compensation payments from a state-administered fund as a condition of MAP eligibility.

[8.281.500.9 NMAC - Rp, 8.281.500.9 NMAC, 8-15-15]

8.281.500.10 RESOURCE STANDARDS: A "resource" is defined as cash or liquid assets and real or personal property which is owned and can be used either directly, or by sale or conversion, for the applicant's or recipient's support and maintenance. Resources may be liquid or non-liquid and may be excluded from the eligibility determination process under certain conditions. A liquid resource is an asset which can readily be converted to cash. A non-liquid resource is an asset or property which cannot readily be converted to cash.

A. Resource determination: The resource determination for a MAP category of eligibility for institutional care is made as of the first moment of the first day of the month. An applicant or recipient is ineligible for any month in which his or her countable resources exceed the allowable resource standard as of the first

moment of the first day of the month. Changes in the amount of countable resources during a month do not affect eligibility or ineligibility for that month.

B. Distinguishing between resources and income: Resources must be distinguished from income to avoid counting a single asset twice. As a general rule, ownership of a resource precedes the current month while income is received in the current month. Income held by an applicant or recipient until the following month becomes a resource.

[8.281.500.10 NMAC - Rp, 8.281.500.10 NMAC, 8-15-15]

8.281.500.11 APPLICABLE RESOURCE STANDARDS: The resource criteria and eligibility standards of this section apply to all applicants for and recipients of a MAP category of eligibility for institutional care. An applicant or recipient is eligible for a MAP category of eligibility for institutional care on the factor of resources if countable resources do not exceed $2,000. Some of an applicant's or recipient's resources are counted in the eligibility determination and some resources are excluded. Any resource which is not specifically excluded in 8.281.500.13 NMAC is considered a countable resource for the purpose of determining a MAP category of eligibility for institutional care.

A. Liquid resources: A liquid resource is cash or something that can easily be converted to cash within 20 business days. The face or surrender value of liquid resources such as cash, savings or checking accounts, and other financial instruments are considered in determining a MAP category of eligibility. The countable value of liquid resources is based on their current fair market value.

(1) An applicant or recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant or recipient cannot provide this verification, the ISD worker provides the applicant or recipient with a detailed request of all documents needed to determine a MAP category of eligibility.

(2) If the applicant or recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant or recipient checking account balance to arrive at the amount to be considered a countable resource.

B. Non-liquid resources: A non-liquid resource is something such as real property that cannot easily be converted to cash within 20 business days. The value of non-liquid resources is computed at current market value minus encumbrances or financial penalties for early withdrawal.

[8.281.500.11 NMAC - Rp, 8.281.500.11 NMAC, 8-15-15]

8.281.500.12 COUNTABLE RESOURCES: Before a resource can be considered countable, the three criteria listed below must be met.

A. Ownership interest: An applicant or recipient must have an ownership interest in a resource for it to be countable. The fact that an applicant or recipient has access to a resource, or has a legal right to use it, does not make it countable unless the applicant or recipient also has an ownership interest in it.

B. Legal right to convert resource to cash: An applicant or recipient must have the legal ability to spend the funds or to convert non-cash resources into cash.

(1) Physical possession of resource: The fact that an applicant or recipient does not have physical possession of a resource does not mean it is not his or her resource. If he or she has the legal ability to spend the funds or convert the resource to cash, the resource is considered countable. Physical possession of savings bonds is a legal requirement for cashing them.

(2) Unrestricted use of resource: An applicant or recipient is considered to have free access to the unrestricted use of a resource even if he or she can take those actions only through an agent, such as a representative payee, guardian, conservator, trustee, or another authorized representative. If there is a legal bar to the sale of a resource, the resource is not countable. However, if a co-owner of real property can bring an action to partition and sell the property, his or her interest in the property is a countable resource.

C. Legal ability to use a resource: If a legal restriction exists which prevents the use of a resource for the applicant's or recipient's own support and maintenance, the resource is not countable.

D. Joint ownership of resources: If an applicant or recipient owns either liquid or non-liquid resources jointly with others, he or she has 30 calendar days from the date requested by the ISD worker to submit all documentation required to verify his or her claims regarding ownership of, access to, and legal ability to use the resource for personal support and maintenance. Failure to do so results in the presumption that the resource is countable and belongs to the applicant or recipient.

(1) Jointly held property: If jointly held property is identified during review of an active case, the ISD worker must:

(a) determine whether the property is a countable resource;

(b) determine whether the value of the jointly held property plus the value of other countable resources exceeds the allowable resource maximum; and

(c) if the value of countable resources exceeds the allowable maximum, advance notice is furnished to the applicant or recipient of the intent to close his or her case and his or her right to verify claims regarding ownership of, access to, and legal ability to use the property for personal support and maintenance.

(i) If the applicant or recipient fails to provide required information or respond within the advance notice period, his or her case is closed.

(ii) If, after expiration of the advance notice period but prior to the end of the month in which the advance notice expires, the applicant or recipient provides the required evidence to show the property is not a countable resource, or is countable in an amount which, when added to the value of other countable resources, does not exceed the maximum allowable limit, and eligibility continues to exist on all other factors, the case is reinstated for the next month.

(2) Joint bank accounts: If liquid resources are in a joint bank account of any type, the applicant's or recipient's ownership interest, while the parties to the account are alive, is presumed to be proportionate to the applicant's or recipient's contributions to the total resources on deposit.

(a) The applicant or recipient is presumed to own a proportionate share of the funds on deposit unless he or she presents clear and convincing evidence that the parties to the account intended the applicant or recipient to have a different ownership interest.

(b) To establish the applicant's or recipient's

ownership interest in a joint account, the following are required:

(i) statement by the applicant or recipient regarding contributions to the account; reasons for establishing the account; who owns the funds in the account; and any supporting documentation; plus

(ii) corroborating statements from the other account holder(s);

(iii) if either the applicant or recipient or the other account holder is not capable of making a statement, the applicant or recipient or an authorized representative must obtain a statement from a third party who has knowledge of the circumstances surrounding the establishment of the joint account.

(c) Failure to provide required documentation within 30 calendar days of the date requested by the ISD worker results in a determination that the entire account amount belongs to the applicant or recipient.

(d) If the existence of a jointly held bank account is identified during the review of an active case, the ISD worker requests evidence of ownership and accessibility. If the evidence is not furnished within 30 calendar days of the request, his or her case is closed.

(3) Life estate: A life estate interest in the applicant's or recipient's own home will count as a resource if the applicant or recipient has not resided on the property continuously for at least 12 months from the date of the life estate purchase. For a purchase of a life estate in the home of another, see Subsection D of 8.281.500.14 NMAC.

(a) The "unisex life estate and remainder interest tables" are used to determine the value of a life estate. See 8.200.520 NMAC. The value is computed by multiplying the current fair market value by the percentage reduction on the unisex table under the column for the applicant's or recipient's age.

(b) If an applicant or recipient feels the value calculated based on this method is overstated, he or she can obtain a valuation of the life estate in the area for use as documentation of lesser value.

E. The home as a countable resource: If the applicant or recipient or his or her authorized representative states the applicant or recipient does not intend to return to the home and it is not the residence of applicant's or recipient's spouse or dependent relative, the home is considered a countable resource. If the applicant or recipient or his or her authorized representative puts the home up for sale and it is not the primary residence of the applicant's or recipient's spouse or a dependent relative, the home is considered a countable resource. A dependent relative is a minor child or adult disabled child of the applicant, recipient, or community spouse.

F. Value of property: The applicant or recipient must supply HSD with written documentation regarding the fair market value of the property from a real estate agent, title company or mortgage insurance company familiar with the area in which the property is located in addition to any encumbrances against the property. The ISD worker determines the equity value of the property by subtracting the amount of the encumbrances from the fair market value of the property.

G. Hardship: Applicants or recipients who are on restricted coverage due to excess equity in their homes may request an undue hardship waiver based on the criteria specified in 8.281.500.24 NMAC.

H. Real property:

(1) If an applicant or recipient is the sole owner of real property, other than the applicant's or recipient's or his or her primary residence and has the right to dispose of it, the entire equity value is included as a countable resource.

(2) If an applicant or recipient owns property with one or more individuals and the applicant or recipient has the right, authority or power to liquidate the property or his or her pro-rata share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to applicant or recipient. The applicant or recipient must provide a copy of the legal document which indicates his or her interest in the property.

I. Vehicles: One automobile is totally excluded regardless of value if it is used for transportation for the applicant or recipient or a member of applicant's or recipient's household. Any other automobiles are considered to be non-liquid resources. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

J. Household goods and personal effects: Household goods and personal effects are considered countable resources if the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to gems and jewelry that is not worn or held for family significance, or collectibles.

K. Promissory notes: If an applicant or recipient holds or owns a promissory note and the note is negotiable, it is a countable resource. The value is the outstanding principal balance due at the time of the applicant's or recipient's MAP application, unless the applicant or recipient proves that it has a lower value.

(1) A promissory note held by the applicant or recipient must be a bona fide loan. This means that it must be legally valid and made in good faith. The ISD worker must evaluate the note and determine whether or not it is a bona fide loan. In order to determine if the note is a bona fide loan, the ISD worker should obtain documentation of the applicant's or recipient's receipt of payments on the note at the time of application and at re-certification. If the applicant or recipient sells or transfers the promissory note, then he or she may be subject to a penalty for a transfer of assets for less than fair market value.

(2) If the promissory note is non-negotiable, and the applicant or recipient receives payments on the note that could be used for food or shelter, then the amount of the payment retained in the month following receipt is a resource to the applicant or recipient.

(3) If an applicant or recipient purchases a promissory note, loan or mortgage, the repayment terms must be actuarially sound, provide for equal payment amounts with no deferral or balloon payments, and it must contain a provision that prohibits cancellation of the balance upon the death of the lender. A promissory note not meeting these requirements shall be treated as a transfer of assets for less than fair market value. If a promissory note does not meet these requirements, the value of the note, loan or mortgage is the outstanding balance due on the date of the applicant's or recipient's MAP application.

L. Pension funds: A pension fund, if accessible to the applicant or recipient, is a countable resource. Any fees for withdrawal of the funds are subtracted from the balance and the remainder is a countable resource.

M. Individual retirement accounts (IRA): An IRA is a tax-deductible savings account that

sets aside money for retirement. Funds in an IRA are counted as an asset in their entirety less the amount of penalty for early withdrawal.

N. Keogh plan: A Keogh plan is a retirement plan established by a self-employed applicant or recipient alone or for the self-employed applicant or recipient and his or her employees. If the Keogh plan was established for the self-employed applicant or recipient alone, the funds in the plan are counted as an asset in their entirety less the amount of penalty for early withdrawal. If the Keogh plan was established for employees other than the spouse of the applicant or recipient, the funds do not count as an asset.

O. Loans: In some circumstances a loan may be a countable resource.

(1) Negotiable loan. If an applicant or recipient owns a loan agreement or is a lender and the agreement is a negotiable, bona fide loan:

(a) the outstanding principal balance is a resource of the applicant or recipient;

(b) the cash provided to the borrower is no longer the applicant or recipient lender's resource because he or she cannot access it for his or her own use; the loan agreement replaces the cash as the applicant or recipient lender's resource;

(c) payments that the applicant or recipient lender receives from the borrower against the loan principal are conversions of a resource, not income; if retained, the payments are counted as the applicant or recipient lender's resource starting in the month following the month of receipt; and

(d) interest income received by the applicant or recipient lender is unearned income.

(2) Non-negotiable loan. If the applicant or recipient owns a loan agreement or is a lender and the loan agreement is not a bona fide loan or is not negotiable:

(a) the agreement is not a resource of the applicant or recipient lender;

(b) payments against the principal are income to the applicant or recipient lender, not conversion of a resource;

(c) the cash specified in the agreement may be a resource if the applicant or recipient lender can access it for his or her own use; and

(d) interest income received by the applicant or recipient lender is unearned income.

(3) Bona fide loan. If the applicant or recipient is the borrower and the agreement is a bona fide loan:

(a) the loan agreement itself is not a resource for the applicant or recipient; and

(b) the cash provided by the applicant or recipient lender is not income, but is the borrower's resource if retained in the month following the month of receipt.

(4) Not a bona fide loan. If the applicant or recipient is the borrower and the agreement is not a bona fide loan:

(a) the loan agreement itself is not a resource of the applicant or recipient; and

(b) the cash provided by the applicant or recipient lender is income in the month received and is a resource if retained in the month following the month it was received.

(5) Informal loan. If the agreement is an agreement between applicants or recipients who are not in the business of lending money or providing credit, it is an informal loan. An informal loan is bona fide if it meets all of the following criteria:

(a) the agreement is enforceable under state law;

(b) the agreement is in effect at the time that the cash is provided to the borrower; money given to an applicant or recipient with no obligation to repay cannot become a loan at a later date;

(c) the obligation to repay the loan must be acknowledged by both the applicant or recipient lender and the borrower; when money or property is given and accepted based on any understanding other than it is to be repaid by the receiver, there is no loan;

(d) the agreement must include a plan or schedule for repayment, and the borrower's express intent to repay by pledging real or personal property or anticipated future income (such as social security insurance (SSI) benefits);

(e) the repayment plan or schedule must be feasible; in determining the plan's feasibility, consider the amount of the loan, the applicant's or recipient's resources and income and the applicant's or recipient's living expenses;

(f) if the applicant or recipient is the borrower, the loan proceeds are a resource if they are retained in the month following the month of receipt; the resource value is the amount of the proceeds that the applicant or recipient still holds in the month following the month of receipt;

(g) if the applicant or recipient is the lender, the agreement is a countable resource starting in the month after the month that the applicant or recipient lender provides the proceeds to the borrower; and

(h) the agreement's resource value is the outstanding principal balance unless the applicant or recipient lender provides evidence that the loan has a lower value.

P. Other financial instruments: Other financial instruments will be evaluated by HSD to determine if they are a countable resource.

Q. Continuing care retirement community, assisted living, life care community or like living arrangement: The portion of initial fees paid upon signing a contract for housing and care that has a potential to be refunded to the applicant or recipient is countable.

R. Other countable resources: Other liquid or non-liquid resources must be considered in the calculation of total countable resources. The following non-liquid resources may be included in the calculation of countable resources if they cannot be excluded pursuant to 8.281.500.13 NMAC:

(1) burial funds;

(2) burial spaces;

(3) life insurance and other insurance products such as annuities;

(4) income-producing property; and

(5) other financial investment products.

[8.281.500.12 NMAC - Rp, 8.281.500.12 NMAC, 8-15-15]

8.281.500.13 RESOURCE EXCLUSIONS: Some types of resources can be excluded from the calculation of countable resources if they meet the specific criteria listed below.

A. Burial fund exclusion: Up to $1,500 can be excluded from the countable liquid resources of an applicant or recipient if designated as his or her burial fund. An additional amount of up to $1,500 can be excluded from countable liquid resources if designated as burial funds for the spouse of the applicant or recipient. The burial fund exclusion is

separate from the burial space exclusion.

(1) Retroactive designation of burial funds: An applicant or recipient can retroactively designate funds for burial back to the first day of the month in which the applicant or recipient intended the funds to be set aside for burial. The applicant or recipient must sign a statement indicating the month the funds were set aside for burial.

(2) Limit on exclusion: An applicant or recipient can designate as much of his or her liquid resources as he/she wishes for burial purposes. However, only one burial fund allowance of up to $1,500 each for the applicant or recipient and his or her spouse can be excluded from countable resources. A burial fund exclusion does not continue from one period of eligibility to another (i.e., across a period of ineligibility). For each new period of eligibility, any exclusion of burial funds must be developed as for an initial application.

(3) Removal of designation: An applicant or recipient cannot "un-designate" burial funds, unless one of the following occurs:

(a) eligibility terminates;

(b) part, or all, of the funds can no longer be excluded because the applicant or recipient purchased excluded life insurance or an irrevocable burial contract which partially or totally offsets the available burial fund exclusion; or

(c) the applicant or recipient uses the funds or any portion of the funds for another purpose; this action makes the funds countable; any designated burial funds used for another purpose will be counted as income in the month withdrawn and as a resource thereafter.

(4) Reduction of burial fund exclusion: The $1,500 burial fund exclusion is reduced by the following:

(a) the face value of excluded life insurance policies;

(b) assets held in irrevocable burial trusts; irrevocable means the value paid cannot be returned to the applicant or recipient;

(c) assets that are not burial space items held in irrevocable burial contracts;

(d) assets held in other irrevocable burial arrangements; and

(e) assets held in an irrevocable trust available to meet burial expenses.

(5) Interest from burial fund: Interest derived from a burial fund is not considered a countable resource or income if all the following conditions exist:

(a) the original amount is excluded;

(b) the excluded burial fund is not commingled with non-excluded burial funds;

(c) the interest earned remains with the excluded burial funds.

(6) Commingling of burial funds: Burial funds cannot be commingled with non-burial funds. If only part of the funds in an account are designated for burial, the burial fund exclusion cannot be applied until the funds designated for burial expenses are separated from the non-burial funds. Countable and excluded burial funds can be commingled.

(7) Life insurance policy designated as burial fund: An applicant or recipient can designate a life insurance policy as a burial fund at the time of application. The ISD caseworker must first analyze Subsection H of 8.281.500.13 NMAC of this rule.

(8) Burial contracts: If an applicant or recipient has a prepaid burial contract, the ISD caseworker determines whether it is revocable or irrevocable and whether it is paid for. Until all payments are made on a burial contract, the amounts paid are considered burial funds and no burial space exclusions apply.

(a) An applicant or recipient may have a burial contract which is funded by a life insurance policy. The life insurance may be either revocably or irrevocably assigned to a funeral director or mortuary.

(b) A revocable contract exists if the value can be returned to the applicant or recipient. An irrevocable contract exists when the value cannot be returned. If the contract or insurance policy assignment is revocable, the following apply.

(i) If the burial contract is funded by a life insurance policy, the policy is the resource which must be evaluated. The burial contract itself has no value. It exists only to explain the applicant's or recipient's burial arrangements.

(ii) No exclusions can be made for burial space items because the applicant or recipient does not have a right to them if the contract is not paid for or the policy is not paid up.

(c) If the assignment is irrevocable, the life insurance or burial contract is not a countable resource, because the applicant or recipient does not own it.

(i) The burial space exclusions can apply if the applicant or recipient has the right to the burial space items.

(ii) The value of the irrevocable burial arrangement is applied against the $1,500 burial fund exclusion only if the applicant or recipient has other liquid resources to designate for burial.

B. Burial space exclusion: A burial space or an agreement which represents the purchase of a burial space held for the burial of an applicant or recipient, his or her spouse, or any other member of his or her immediate family is an excluded resource regardless of value. Interest and accruals on the value of a burial space are excluded from consideration as countable income or resources.

(1) When calculating the value of resources to be deemed to an applicant or recipient from his or her parent(s) or spouse, the value of spaces held by the parent(s) or spouse which are to be used for the burial of the applicant or recipient, or any member of the applicant's or recipient's immediate family, including the deemer parent or spouse, must be excluded.

(2) The burial space exclusion is separate from, and in addition to, the burial fund exclusion.

(3) Burial space definitions: "Burial space" is defined as a(n) burial plot, gravesite, crypt, mausoleum, casket, urn, niche, or other repository customarily used for the deceased's bodily remains.

(a) A burial space also includes necessary and reasonable improvements or additions, such as vaults, headstones, markers, plaques, burial containers (e.g., caskets), arrangements for the opening and closing of a gravesite, and contracts for care and maintenance of the gravesite, sometimes referred to as endowment or perpetual care.

(b) Items that serve the same purpose are excluded once per applicant or recipient, such as excluding a cemetery lot and a casket, but not a casket and an urn.

(4) Burial space contract: An agreement which

represents the purchase of a burial space is defined as a contract with a burial provider for a burial space held for the eligible applicant or recipient or a member of his or her immediate family.

(a) Until all payments are made on the contract, the amounts paid are considered burial funds and no burial space exclusions apply.

(b) An applicant's or recipient's immediate family includes:

(i) spouse;

(ii) natural or adoptive parents;

(iii) minor or adult children, including adoptive and stepchildren;

(iv) siblings, including adoptive and stepsiblings; and

(v) spouse of any of the above relatives.

(c) If a relative's relationship to an applicant or recipient is by marriage only, the relationship ceases to exist upon the dissolution of the marriage.

(5) Burial space "held" for an applicant or recipient: A burial space is considered held for an applicant or recipient if:

(a) someone has title to or possesses a burial space intended for the use of the applicant or recipient or a member of his or her immediate family; or

(b) someone has a contract with a funeral service company for a specified burial space for the applicant or recipient or a member of his or her immediate family, such as an agreement which represents the applicant's or recipient's current right to the use of the items at the amount shown.

(6) Until the purchase price is paid in full, a burial space is not considered "held for" an applicant or recipient under an installment sales contract or similar device if:

(a) the applicant or recipient does not currently own the space;

(b) the applicant or recipient does not currently have the right to use the space; and

(c) the seller is not currently obligated to provide the space.

C. Life estate exclusion: The value of a life estate interest in the applicant's or recipient's own home or in the home of another is excluded if the applicant or recipient has continuously resided in the home for a period of 12 months or more from the date of the life estate purchase. The value of the remainderman's interest when a life estate is retained in one's own home is considered a transfer of resources to be evaluated in accordance with 8.281.500.14 NMAC.

D. Settlement exclusions: Agent Orange settlement payments made to applicant or recipient veterans or their survivors are excluded from consideration as resources.

(1) Payments made under the Radiation Exposure Compensation Act are excluded from consideration as resources.

(2) Payments received from a state-administered fund established to aid victims of crime are excluded for nine months beginning the month after the month of receipt.

(3) Payments under the foundation called 'remembrance, responsibility and the future', excluded from consideration as resources.

E. Exclusions for real property and home: A home is any shelter used by an applicant or recipient, or his or her spouse, as the principal place of residence. The home is not considered a countable resource while in use by the applicant, recipient, or his or her spouse as a principal place of residence. If an applicant's or recipient's home equity value exceeds the amount allowed under 8.200.510 NMAC, then the entire valued amount of his or her home is a countable resource. An applicant or recipient with home equity of more than the amount specified shall be placed on restricted coverage for as long as he or she owns the home. The home includes any buildings and contiguous land used in the operation of the home. If the amount is equal to or less than allowed under 8.200.510 NMAC, then his or her home is excluded during the periods when he or she resides in an acute care or long-term care medical facility when the applicant or recipient, or his or her authorized representative, states that the applicant or recipient intends to return to his or her home.

F. Exclusion of home: If the applicant or recipient or his or her authorized representative states the applicant or recipient does not intend to return to the home, but the home is the residence of the applicant's or recipient's spouse or dependent minor child or adult disabled child, the home is an excluded resource.

G. Income-producing property exclusion: To be excluded from consideration as a countable resource, income-producing property that does not qualify as a bona fide business (e.g., rental property or mineral rights) must have an equity value of no more than $6,000 and an annual rate of return of at least six percent (6%) of the equity value. See Subsection F of 8.281.500.13 NMAC if the equity value exceeds $6,000 but the rate of return is at least six percent (6%) annually. The $6,000 and six percent (6%) limitation does not apply to property used in a trade or bona fide business, or to property used by an applicant or recipient as an employee which is essential to the applicant's or recipient's self-support (e.g., tools used in employment as a mechanic, property owned or being purchased in conjunction with operating a business). Existence of a bona fide business can be established by documentation such as business tax returns.

(1) Determination of rate of return: To calculate the annual rate of return for income producing property when the $6,000 and six percent (6%) limits apply, the previous year's income tax statement, or at least three months earnings is used to project the rate of return for the year.

(a) If the income is sporadic or has decreased from that needed to maintain a six percent (6%) rate of return for the coming year, the property is reevaluated at appropriate intervals.

(b) If the annual rate of return is at least six percent (6%) of the equity value but the equity value exceeds $6,000, only the excess equity is a countable resource.

(c) If the annual rate of return is less than six percent (6%) but the usual rate of return is more, the property is excluded as a countable resource if all the following conditions are met:

(i) unforeseeable circumstances, such as a fire, cause a temporary reduction in the rate of return;

(ii) the previous year's rate of return, as documented by the income tax statement or several months receipts, is at least six percent (6%); and

(iii) the property is expected to produce a rate of return of at least six percent (6%) within 18 months of the end of the year in which the adverse circumstances occurred; the ISD caseworker records in the case narrative the plan of action which

is expected to increase the rate of return.

(d) The ISD caseworker notifies the applicant or recipient in writing that the property is excluded based on its expected increase in return and that it will be reevaluated at the end of the 18 month grace period. When this period ends, the property must be producing an annual rate of at least six percent (6%) to continue to be excluded as a countable resource.

(2) Types of income-producing property: Income-producing property includes:

(a) a business, such as a farm or store, including necessary capital and operating assets such as land and buildings, inventory or livestock; the property must be in current use or have been used with a reasonable expectation of resumed use within a year of its most recent use; the ISD caseworker must account for the cash actually required to operate the business; liquid business assets of any amount are excluded;

(b) non-business property includes rental property, leased property, land leased for its mineral rights, and property producing items for home consumption; property which produces items solely for home use is assumed to be producing an annual rate of return of at least six percent (6%);

(c) employment-related property, such as tools or equipment; the applicant or recipient must provide a statement from his or her employer to establish that tools or equipment are required for continued employment when the applicant or recipient leaves the institution; if the applicant or recipient is self-employed, only those tools normally required to perform the job adequately are excluded; the applicant or recipient must obtain a statement from someone in the same line of self-employment to establish what is excludable.

H. Vehicle exclusion: The term "vehicle" includes any mode of transportation such as a passenger car, truck or special vehicle. Included in this definition are vehicles which are unregistered, inoperable, or in need of repair. Vehicles used solely for purposes other than transportation, such as disassembly to resell parts, racing or as an antique, are not included in this definition. Recreational vehicles and boats are classified as personal effects and are evaluated under the household goods and personal effects exclusion. One vehicle is totally excluded if regardless of value if it is used for transportation for the applicant or recipient or a member of his or her household. Any other automobiles are considered to be non-liquid resources. Equity in the other automobiles is counted as a resource.

I. Life insurance exclusion: The value of life insurance policies is not considered a countable resource if the total cumulative face value of all policies owned by the applicant or recipient does not exceed $1,500. A policy is considered to be "owned" by the applicant or recipient if the applicant or recipient is the only one who can surrender the policy for cash.

(1) Consideration of burial insurance and term insurance: Burial insurance and term insurance are not considered when computing the cumulative face value because this insurance is redeemable only upon death.

(2) Calculation when value exceeds limit: If the total cumulative face value of all countable life insurance policies owned by the applicant or recipient exceeds $1,500, the ISD caseworker:

(a) verifies the total cash surrender value of all policies and considers the total amount a countable resource;

(b) informs the applicant or recipient that the insurance policies can be converted to term insurance or ordinary life insurance of lower face value at his or her option, if the cash surrender value, alone or in combination with other countable resources, exceeds the resource standard.

J. Qualified State Long-term Care Insurance Partnership (QSLTCIP) program: A resource exclusion equal to the amount of the qualified long-term care insurance benefit payments is made to or on the behalf of the applicant or recipient as determined during his or her eligibility process.

(1) In order to be considered a QSLTCIP policy it must meet the requirements set forth in 1917(a) of the Social Security Act.

(2) The applicant or recipient:

(a) must have been a beneficiary of a QSLTCIP that was purchased on or after August 15, 2015; or

(b) must have a QSLTCIP policy established in another state with a CMS approved state plan for state long-term care insurance partnerships and the beneficiary must have been a resident of such a state on the date the policy was purchased; or

(c) must be a current New Mexico resident and after August 14, 2015 have purchased a long-term care policy that was converted to a QSLTCIP through an endorsement, exchange, or rider.

(3) Long-term care insurance does not qualify as a QSLTCIP.

(4) Resources excluded in the amount of benefits paid out are also excluded in the estate recovery process.

(5) Resources can be designated for protection when a MAP category of eligibility for either institutional care services or home and community based services is established, while receiving MAD benefits provided through institutional care or home and community based waiver programs, or during the estate recovery process after a recipient dies.

(6) An applicant or recipient may protect assets up to the amount of QSLTCIP benefit payments made to or on the behalf of an applicant or recipient; this is the eligible applicant or recipient's protected asset limit (PAL). If the value of protected assets exceeds the PAL, the excess value is counted against the asset limit and is not protected in estate recovery.

(7) The following conditions may apply to assets protected under a QSLTCIP:

(a) an applicant or recipient may keep protected resources;

(b) the value of protected assets is updated each year at the MAP eligibility review; the updated value is the counted towards the PAL;

(c) an applicant or recipient may transfer a protected asset to another person without a transfer penalty; a transferred asset is counted against the PAL based on the value of the asset on the day it was transferred;

(d) an applicant or recipient may use a protected asset to obtain another protected asset, which then becomes the protected asset;

(e) an applicant or recipient can spend or deplete a protected asset; the asset continues to be protected and is counted against the PAL even though the applicant or recipient no longer has it;

(f) once an asset is officially designated for protection, it cannot be undesignated in favor of designating another asset;

(g) changes in the status of protected assets must be reported at the recipient's annual re-determination for MAP eligibility; some examples of changes are transferring, spending, depleting, or replacing an asset; and

(h) new countable assets that are reported in-between MAP eligibility renewals must be evaluated when reported to determine if they can be protected under the QSLTCIP program's PAL;

(i) the following assets cannot be protected under the QSLTCIP program and must be made available after the death of the recipient to reimburse HSD up to the amount of the paid MAD benefits on the deceased recipient behalf;

(i) special and or supplemental needs, pooled charitable trusts, irrevocable trusts with a reversionary state interest, or income diversion trusts; and

(ii) annuity interest where HSD has been named a reminder beneficiary.

(8) Unused asset protection may result because all available asset protection was not used at the time of designation or when an applicant or recipient PAL has increased because the applicant or recipient continues to receive benefits from a QSLTCIP while receiving MAD benefits.

(9) Unused asset protection will automatically apply to protect assets already officially indicated for protection when the value of the asset has increased and there is unused asset protection.

(10) Unused asset protection may also be used to more fully cover an asset that is only partially protected, protect additional assets that have become available during a recipient's lifetime, or to protect assets in a recipient's estate after he or she dies.

K. Produce for home consumption exclusion: The value of produce for home consumption is totally excluded.

L. Exclusion of settlement payments from the federal department of housing and urban development: Payments from the department of housing and urban development (HUD) as defined in *Underwood v. Harris* are excluded as income and resources. These one-time payments were made in the spring of 1980 to certain eligible tenants of subsidized housing (Section 236 of the National Housing Act).

(1) Segregation of payment: To be excluded as a resource, payments retained by an applicant or recipient must be kept separate; these payments must not be combined with any other countable resources.

(2) Income from segregated funds: Interest or dividend income received from segregated payment funds is not excluded from income, or, if retained, is not an excluded resource; this interest or dividend income must be kept separate from excludable payment funds.

M. Lump sum payments exclusion: SSI and social security lump sum payments for retroactive periods are excluded as countable resources for nine months after the month in which they are received. See Subsection B of 8.281.500.15 NMAC for instructions regarding SSI and social security lump sums which are placed into the ownership of a MAD qualifying trust. Social security lump sum payments are considered infrequent income. See Subsection C of 8.281.500.19 NMAC.

N. Home replacement exclusion: The proceeds from a reverse mortgage from the sale of an excluded home is excluded. Additionally, the value of a promissory note or similar installment sales contract which constitutes proceeds from the sale of an excluded home is excluded from countable resources if all of the following conditions are met:

(1) the note results from the sale of the applicant's or recipient's home as described in Subsection E of 8.281.500.13 NMAC;

(2) within three months of receipt (execution) of the note, the applicant or recipient purchases a replacement home which meets the definition of a home in Subsection E of 8.281.500.13 NMAC;

(3) all note-generated proceeds are reinvested in the replacement home within three months of receipt;

(4) additional exclusions: in addition to excluding the value of the note itself, the down payment received from the sale of the former home, as well as that portion of any installment amount constituting payment on the principal are also excluded from countable resources;

(5) failure to purchase another excluded home timely: if the applicant or recipient does not purchase another home which can be excluded under the provisions of Subsection E of this section and the following paragraphs within three months, the value of the promissory note or similar sales contract received from the sale of an excluded home becomes a countable resource as of the first moment of the first day of the month following the month the note is executed; if the applicant or recipient purchases a replacement home after the expiration of the three month period, the value of the promissory note or similar installment sales contract becomes an excluded resource effective the month following the month of purchase of the replacement home provided that all other proceeds are fully and timely reinvested;

(6) failure to reinvest proceeds timely: if the proceeds from the sale of an excluded home under a promissory note or similar installment sales contract are not reinvested fully within three months of receipt in a replacement home, the following resources become countable as of the first moment of the first day of the month following receipt of the payment:

(a) the fair market value of the note;

(b) the portion of the proceeds, retained by the applicant or recipient which was not timely reinvested;

(c) the fair market value of the note remains a countable resource until the first moment of the first day of the month following the receipt of proceeds that are fully and timely reinvested in the replacement home; failure to reinvest proceeds for a period of time does not permanently preclude exclusion of the promissory note or installment sales contract; however, previously received proceeds that were not timely reinvested remain countable resources to the extent they are retained;

(7) interest payments: if interest is received as part of an installment payment resulting from the sale of an excluded home under a promissory note or similar installment sales contract, the interest payments are considered countable unearned income in accordance with Subsection A of 8.281.500.19 NMAC;

(8) when the home replacement exclusion does not apply: if the home replacement exclusion does not apply, the market value of a promissory note or sales contract as well as the portion of the payment received on the principal are considered countable resources.

O. Household goods and personal effects exclusion: Household goods and personal effects are excluded if they meet one of the following four criteria:

(1) items of personal property, found in or near the home, which are used on a regular basis; items may include but are not limited to furniture, appliances, recreational vehicles (i.e. boats and RVs), electronic equipment (i.e. computers and television sets), and carpeting;

(2) items needed by the householder for maintenance, use and occupancy of the premises as a home; items may include but are not limited to cooking and eating utensils, dishes, appliances, tools, and furniture;

(3) items of personal property ordinarily worn or carried by the applicant or recipient; items may include but are not limited to clothing, shoes, bags, luggage, personal jewelry including wedding and engagement rings, and personal care items;

(4) items otherwise having an intimate relation to the applicant or recipient; items may include but are not limited to prosthetic devices, educational or recreational items such as books or musical instruments, items of cultural or religious significance to an applicant or recipient; or items required because of an applicant or recipient impairment.

[8.281.500.13 NMAC - Rp, 8.281.500.13 NMAC, 8-15-15]

8.281.500.14 ASSET TRANSFERS: The ISD caseworker must determine whether an applicant or recipient or his or her spouse transferred assets within a specified period of time (lookback period) before applying for a MAP category of eligibility for institutional care or at any time after approval of the applicant's or recipient's application. Then the ISD caseworker must determine if the applicant or recipient or his or her spouse received fair market value for the asset. If the applicant or recipient or his or her spouse did not receive fair market value for the asset, then the applicant or recipient may be subject to a penalty. In the case of an asset held by the applicant or recipient in common with another individual or individuals in a joint tenancy, tenancy in common, or similar arrangement including life estate or remainderman relation, the asset (or the affected portion of such asset) is considered to be transferred by the applicant or recipient when any action is taken, either by the applicant or recipient or by any other individual, acting on behalf of the applicant or recipient (including but not limited to a spouse, representative payee, trustee, guardian, conservator, or another authorized representative), that reduces or eliminates the applicant's or recipient's ownership or control of such asset. Any asset transferred to a community spouse in excess of the community spouse resource allowance (CSRA) is considered to be totally available to the institutionalized spouse and must be spent down before eligibility can be established.

A. Lookback period: Any transfer of assets made prior to February 8, 2006 is subject to a 36-month lookback period prior to the date of the applicant's or recipient's application or at any time subsequent to the approval of an application for a MAP category of eligible for institutional care. Transfers made on or after February 8, 2006 are subject to a 60-month lookback period.

(1) The lookback period is 60 months if the transfer occurred as the result of payments from a trust or portions of a trust that are treated as assets disposed of by the applicant or recipient.

(2) The lookback period starts on the date the applicant or recipient applies for a MAP category of institutional care and is in an institution.

B. Transfer of assets for less than fair market value: If a transfer of assets occurred within the applicable lookback period, or at any time after approval of the applicant's or recipient's application, the ISD caseworker must determine whether the applicant or recipient or his or her spouse received fair market value for the transferred asset(s).

(1) Documentation requirement: The applicant or recipient or his or her spouse must provide documentation of the transfer, the fair market value of the asset(s) transferred, the circumstances surrounding the transfer and the amount, if any, received as compensation for the transferred asset.

(2) If the applicant or recipient fails to provide this information without good cause within 30 calendar days from the date requested by the ISD caseworker, the ISD caseworker denies the application or closes the applicant's or recipient's case, as appropriate.

(a) Good cause is considered to exist if the applicant or recipient or his or her authorized representative can show that he or she was effectively precluded from timely reporting because of legal, financial, or other reasons, or because of the existence of a health related problem including death of a family member within the specific degree of relationship during the period of time in which the applicant or recipient, or authorized representative has to report the required information. The health or other problem must have been of such severity and duration as to have effectively precluded the applicant or recipient or his or her authorized representative from reporting in a timely manner. See 8.291.410 NMAC for a detailed description of degree of relationships.

(b) To document the good cause claim, the applicant or recipient or authorized representative must provide proof of the existence of the health or other problem and must explain the circumstances which precluded provision of the required information.

(c) The ISD caseworker makes the determination of good cause subject to review and approval by the county director or designee.

(3) Restricted coverage: If a transfer of assets occurred within the applicable lookback period, or at any time subsequent to approval for a MAP category of institutional care eligibility, for which the applicant or recipient or his or her spouse did not receive fair market value, the ISD caseworker determines if a penalty period must be calculated. The penalty for transfers of assets for less than fair market value in a MAP category of eligibility for institutional care is restricted coverage. "Restricted coverage" means that the applicant or recipient is eligible for all MAD services except services furnished in a nursing facility or services considered to be long-term care services.

(a) Determine the current average monthly cost of nursing facilities for private patients. See 8.281.500.13 NMAC.

(b) Divide the total uncompensated value (amount) of the resources transferred for less than fair market value by the current average monthly cost of nursing facilities for private patients.

(c) The result is the number of months and partial months for which the applicant or recipient will be on restricted coverage.

(4) Calculating restricted coverage when the transferred asset is income: If income has been transferred as a lump sum, the period of restricted coverage is calculated based on the lump sum value.

For transfers of the right to an income stream, the period of restricted coverage is calculated using the actuarial value of all payments transferred. See 8.200.520 NMAC.

C. Transfer rules based on date of transfer: Two sets of rules govern the calculation of penalty periods if a transfer of assets for less than fair market value has occurred. The date of transfer and approval date for the MAP category of institutional care medicaid applicant or recipient institutional care governs which set of rules is used to calculate the penalty period.

(1) For transfers made on or after August 11, 1993: Periods of restricted coverage are calculated as follows (Omnibus Budget Reconciliation Act of 1993):

(a) the period of restricted coverage begins the month the resources were transferred; the total uncompensated value of the transferred assets divided by the average cost to a private patient for nursing facility services in the state at the time of the applicant's or recipient's application is the methodology used to calculate a period of restricted coverage;

(b) transfers for less than fair market value made by an institutionalized SSI applicant or recipient or a community spouse of institutionalized applicant or recipient may subject the institutionalized applicant or recipient to a period of restricted coverage;

(c) penalty periods are now consecutive rather than concurrent; if multiple transfers occur in different months, the periods of restricted coverage begin with the month of the initial transfer and run consecutively; for example, if an applicant or recipient transfers an asset for less than fair market value in February causing four months of restricted coverage (i.e., February through May) and transfers another asset in April causing three months of restricted coverage, the second period of restricted coverage begins in June and lasts through August; and

(d) if an institutionalized applicant or recipient with a community spouse is placed on restricted coverage as the result of a transfer of assets for less than fair market value and the community spouse subsequently becomes eligible for a MAP category of eligibility for institutional care, any remaining months in the restricted coverage period must be divided equally between the spouses.

(2) For transfers made on or after February 8, 2006: Pursuant to the Deficit Reduction Act of 2005, otherwise eligible institutionalized recipients who transfer assets for less than fair market value after this date are penalized as follows:

(a) the period of restricted coverage begins the first day of the month in which the resources were transferred, or the date on which the individual applicant or recipient meets a MAP category of eligibility, and would otherwise be receiving institutional level of care but for the application of the penalty period, whichever is later, and does not occur during any other period of ineligibility as a result of an asset transfer; see Subsection B of 8.281.500.14 NMAC for the methodology used to calculate a period of restricted coverage;

(b) once eligibility has been determined and a penalty period has begun to run, it continues until expiration, whether or not there is a break in the institutionalized recipient's eligibility;

(c) the beginning date of restricted coverage is the first day of the month in which the resources were transferred provided the applicant or recipient is institutionalized and retains his or her MAP category of eligibility for institutional care; for current recipients who fail to report a transfer, the recipients will continue to receive benefits until the adverse action notice date, but HSD may seek to recover any MAD benefits paid for long-term care services during what should have been a period of restricted coverage; federal law does not provide a basis to impose a transfer penalty based on date of discovery;

(d) for a non-institutionalized applicant or recipient, the date restricted coverage begins is the month in which the applicant or recipient becomes institutionalized;

(e) transfers for less than fair market value made by an institutionalized SSI applicant or recipient or a community spouse of the institutionalized applicant or recipient may subject the institutionalized applicant or recipient to a period of restricted coverage; and

(f) multiple transfers occurring in different months are added together and calculated as a single period of ineligibility, that begins on the earliest date that would otherwise apply if the transfer had been made in a single lump sum.

D. Non-excludable transfers: Certain financial instruments must be evaluated before they can be considered a transfer of assets.

(1) Annuities: Annuities belonging to the applicant or recipient or to the spouse of the applicant or recipient must be declared. Annuities must be actuarially sound with no deferral and no balloon payments. Annuities purchased or issued after February 8, 2006 must meet the following additional requirements for exclusion as a transfer of assets:

(a) HSD is named as the remainder beneficiary in the first position for at least the total amount of MAD benefits paid on behalf of the institutionalized applicant or recipient; HSD may be named the remainder beneficiary in the second position if there is a community spouse, or a minor, or a disabled child and is named in the first position if the community spouse or an authorized representative of the child disposes of any such remainder for less than fair market value;

(b) when HSD is a beneficiary of an annuity, issuers of annuities are required to notify MAD of any changes in the disbursement of income or principal from the annuity as well as any changes to HSD's position as remainder beneficiary; and

(c) it is non-assignable and irrevocable.

(2) Life estates: If an applicant or recipient purchases a life estate in another individual's home, the applicant or recipient must live in that home for a period of at least 12 months after the date of purchase or the transaction will be treated as a transfer of assets for less than fair market value.

(3) Promissory notes: If an applicant or recipient uses funds to purchase a promissory note, the repayment terms must be actuarially sound, provide for equal payment amounts with no deferral or balloon payments, and it must contain a provision that prohibits cancellation of the balance upon the death of the applicant or recipient lender. A promissory note not meeting these requirements shall be treated as a transfer of assets for less than fair market value.

E. Excludable transfers: If certain conditions are met, an applicant or recipient is not placed on restricted coverage for transferring assets for less than fair market value.

(1) Transferred asset was home: The asset transferred was a home and title to the home was transferred to:

(a) the spouse of the applicant or recipient;

(b) the son or daughter of the applicant or recipient who is under 21 years of age or who meets the social security administration's definition of disability or blindness; if the child is receiving benefits based on disability or blindness from a program other than social security or SSI, or is not receiving benefits based on disability or blindness from any program, the ISD caseworker must request a determination of disability or blindness from disability determination services;

(c) sibling of the applicant or recipient who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the applicant or recipient was institutionalized; or

(d) son or daughter of the applicant or recipient who was residing in the home for a period of at least two years immediately before the applicant or recipient was institutionalized; for this exclusion to apply, the ISD caseworker must determine that the son or daughter provided care to the applicant or recipient which permitted the applicant or recipient to reside at home rather than in a medical facility or nursing home.

(2) Other asset transfers: Sufficient information must be given to the ISD caseworker to establish that either:

(a) the applicant or recipient intended to dispose of the asset at fair market value; or

(b) at the time of the transfer the applicant or recipient had no expectation of applying for a MAP category of eligibility and the resources were transferred exclusively for a purpose other than to qualify for a MAP category of eligibility as demonstrated by a preponderance of evidence; unless these conditions are met, the transfer is presumed to have been for the purpose of qualifying for a MAP category of eligibility; or

(c) HSD determines that the denial of eligibility would work an undue hardship.

(3) Asset transferred to or for the sole benefit of the community spouse: No transfer penalty is assessed when assets are transferred from one spouse to another (e.g., assets are transferred from an institutionalized spouse to a community spouse). Any asset transferred to a community spouse or to another individual for the sole benefit of the community spouse in excess of the CSRA is considered to be totally available to the institutionalized spouse and must be spent down before eligibility can be established. No transfer penalty is assessed when assets are transferred to another for the sole benefit of the community spouse if all of the conditions listed in Subparagraphs (a) through (c) below are met.

(a) a transfer is considered to be for the sole benefit of the community spouse if it is arranged in such a way that no individual or entity except the community spouse can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future;

(b) a transfer, or transfer instrument, that provides for funds or property to pass to a beneficiary who is not the community spouse is not considered to be established for the sole benefit of the community spouse; for a transfer to be considered to be for the sole benefit of the community spouse, the instrument or document must provide for the spending of the funds involved for the benefit of the community spouse on a basis that is actuarially sound based on the life expectancy of the community spouse or when the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void;

(c) to determine whether an asset was transferred for the sole benefit of the community spouse, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer; a transfer without such a document cannot be said to have been made for the sole benefit of the community spouse since there is no way to establish, without a document, that only the community spouse will benefit from the transfer.

(4) Asset transfers to or for the sole benefit of a blind or disabled child of the institutionalized individual: No transfer penalty is assessed when assets are transferred to a blind or disabled child of the institutionalized applicant or recipient, or to a trust established solely for the benefit of a blind or disabled child of the institutionalized applicant or recipient. For this exemption to apply, the child must meet the social security administration's definition of blindness or disability. The transfer must either meet the criteria set forth in 8.281.500.11 NMAC, or meets all of the conditions listed in this section, Subparagraphs (a) through (c) below to be excluded in the eligibility determination process.

(a) A transfer to such a blind or disabled child is considered to be for the sole benefit of that child if the transfer is arranged in such a way that no individual or entity, except the blind or disabled child, can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(b) A transfer, or transfer instrument, that provides for funds or property to pass to a beneficiary who is not the blind or disabled child of the institutionalized applicant or recipient is not considered to be established for the sole benefit of the blind or disabled child. For a transfer or trust to be considered to be for the sole benefit of a blind or disabled child, the instrument or document must provide for the spending of the funds involved for the benefit of the blind or disabled child on a basis that is actuarially sound based on the life expectancy of the child. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the blind or disabled child of the institutionalized applicant or recipient, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the blind or disabled child since there is no way to establish, without a document, that only the blind or disabled child will benefit from the transfer.

(5) Asset transfers to a trust for the sole benefit of a disabled individual under age 65: No transfer penalty is assessed when assets are transferred to a trust established for the sole benefit of an individual under age 65 who meets the social security administration's definition of disability. The transfer must either meet the criteria set forth in 8.281.500.11 NMAC or meet all of the conditions listed in Subparagraphs (a) through (c) below to be excluded in the eligibility determination process.

(a) A transfer is considered to be for the sole benefit of a disabled individual under age 65 as described above if the transfer is arranged in such a way that no individual or entity except the disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(b) A transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not a disabled individual under age 65 as described above, is not considered to be established for the sole benefit of the disabled individual. For a transfer or trust to be considered to be for the sole benefit of the disabled individual, the instrument or document must provide for the spending of the funds involved for the benefit of the disabled individual on a basis that is actuarially sound based on the life expectancy of the disabled individual. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the disabled individual, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the disabled individual since there is no way to establish, without a document, that only the disabled individual will benefit from the transfer.

(6) Assets transfers and qualified state long-term care insurance partnerships (QSLTCIP) protected asset limits (PAL):

(a) No transfer penalty is assessed if at initial determination the applicant or recipient has indicated protection of the transferred asset and there is enough of the PAL to cover the value of the resource at the time of the transfer.

(b) No transfer of assets penalty is assessed if the applicant or recipient has previously indicated an asset for protection and there was enough of the applicant's or recipient's PAL to cover the value of the resource at the time of the transfer.

(c) No transfer penalty is assessed for the portion of a resource which has been partially protected. The unprotected portion of the resource is subject to all assets transfer provisions outlined in this section of this rule.

F. Re-establishing eligibility: If an asset is transferred for less than fair market value and the applicant or recipient is placed on restricted coverage, he or she has options to re-establish his or her past MAP category of eligibility.

(1) Reimbursement by transferee: The individual to whom the asset was transferred can reimburse the applicant or recipient for the asset at fair market value or liquidate or sell the asset and spend an amount equal to the uncompensated fair market value on the applicant's or recipient's care or other exempt assets as listed in 8.281.500.13 NMAC.

(2) Return asset to applicant: The asset can be transferred back to the applicant or recipient, liquated or sold. The applicant or recipient must determine the use of the asset; such use may include spending down the resource limit on the applicant's or recipient's care, classifying the resource as exempt as listed in 8.281.500.13 NMAC, or having the asset become a countable resource.

(3) If the transferred asset is restored to an applicant or recipient, he or she may become totally ineligible for a MAP category of institutional care eligibility due to excess resources. The ISD caseworker must verify that the applicant's or recipient's countable assets do not exceed the standard for a MAP category of institutional care eligibility. If the transferred asset is restored to an applicant or recipient, he or she may no longer be eligible for a MAP category of institutional care due to the excess resources. The ISD caseworker must verify that the applicant's or recipient's countable assets meet the requirements to have a MAP category of institutional care eligibility.

[8.281.500.14 NMAC - Rp, 8.281.500.14 NMAC, 8-15-15]

8.281.500.15 RESOURCE STANDARDS FOR MARRIED COUPLES:

A. Community property resource determination methodology: Community property resource determination methodology is used in the eligibility determination for a married applicant or recipient who began institutionalization for a continuous period prior to September 30, 1989.

(1) To determine the countable value of resources, the ISD worker must:

(a) add the total value of all resources owned by both spouses;

(b) exclude the separate property of the non-applicant or recipient spouse; and

(c) attribute one-half of the total value of the community property to the applicant or recipient spouse plus the value of his or her separate property;

(d) the resulting figure must be less than $2,000.

(2) Application of community property rules: Under community property rules, all property held by either spouse is presumed to be community property unless successfully rebutted by the applicant or recipient, or representative. To rebut community property status, the applicant or recipient, or representative must document that the property was:

(a) acquired before marriage or after a divorce or legal separation;

(b) designated as separate property by a judgment or decree of any court;

(c) acquired by either spouse as a gift or inheritance; or

(d) designated as separate property by a written agreement between the spouses, including a deed or other written agreement concerning property held by either or both spouses in which the property is designated as separate property.

(i) If one of the parties to this written agreement is incompetent, legal counsel must execute the agreement on behalf of the incompetent spouse.

(ii) Property designated as separate by written agreement is evaluated according to current rules regarding transfer of resources.

(iii) Income cannot be designated as separate by an agreement between spouses; income is considered separate only if it is derived from a resource that has been determined separate.

B. Spousal impoverishment: Spousal impoverishment provisions apply if one spouse of a married couple is

institutionalized for a continuous period of at least 30 consecutive days beginning on or after September 30, 1989. See spousal impoverishment provisions of the Medicare Catastrophic Coverage Act of 1988 (MCCA). No comparable treatment of resources and income is required for non-institutionalized applicants or recipients who do not have a spouse remaining in the community. These provisions cease to apply as of the month following the month an applicant or recipient is no longer institutionalized or no longer has a community spouse. If a community spouse or other dependents apply for a MAP category of eligibility they are subject to the rules governing treatment of income and resources for the individual applicant or recipient.

(1) Resource assessment: A resource assessment must be completed to evaluate a couple's resources as of the first moment of the first day of the month one member of the married couple is institutionalized for a continuous period of at least 30 consecutive days beginning on or after September 30, 1989. This process is used to determine the amount of resources which may be protected for the community spouse. See Subparagraph (f) below for resources which must be included in the resource assessment. The resource assessment and computation of spousal shares occurs only once, at the beginning of the first continuous period of institutionalization beginning on or after September 30, 1989. A new resource assessment may be completed if it is later determined that the original resource assessment was inaccurate. Upon the death of the community spouse, the ISD worker may review the applicant's or recipient's resources.

(a) A MAP application does not need to be submitted at the time the assessment is requested. A reasonable fee may be charged for completing assessments which are not made in conjunction with the applications. Applications for assessments are available at the ISD offices which determine eligibility for a MAP category of institutional care. Either member of the couple or their authorized representative may request an assessment application.

(b) The ISD worker must complete a resource assessment using the following criteria:

(i) one member of a married couple became institutionalized on or after September 30, 1989 in an acute care hospital or nursing facility for a continuous period of at least 30 consecutive days;

(ii) the institutionalized applicant or recipient has a spouse who remains in the community in a non-institutionalized setting; and

(iii) the institutionalized spouse remains, or is likely to remain, institutionalized for a period of at least 30 consecutive days based on a written statement from his or her physician and supporting medical documentation; the institutionalized applicant or recipient is considered "likely to remain" even if he or she does not actually remain in an institution for 30 consecutive days if he or she met this condition at the beginning of the period of institutionalization.

(c) The ISD worker explains exactly what verification is required to complete the assessment. If the ISD worker requires further information, the individual requesting the assessment is notified in writing and given a reasonable time period of at least 10 working days to provide the additional information.

(d) The institutionalized individual or his or her spouse or an authorized representative is responsible for providing all verification necessary to complete the assessment.

(e) The ISD worker completes the resource assessment within 45 calendar days of the date of receipt of the completed and signed assessment application unless verification is still pending by the 45th day. In that case, the assessment is not completed until all necessary information is provided by the institutionalized individual or his or her spouse or authorized representative.

(f) Assessments include the total value of the couple's countable resources held jointly or separately as of the first moment of the first day of the month one spouse became institutionalized for a continuous period of at least 30 consecutive days beginning on or after September 30, 1989. The assessment form identifies the spousal shares and the CSRA. The couple is entitled to all resource exclusions allowed in 8.281.500.13 NMAC except that value limits for the exempt vehicle and household goods of the community spouse do not apply. Assets excluded under the QSLTCI program are counted in the spousal resource assessment. The disregarded assets are included in determining the amount of the CSRA. The disregarded asset is not counted in determining the applicant's or recipient's eligibility.

(g) When the assessment is complete, the ISD worker copies all documentation used to make the determination of countable resources and retains the documents in the case record. The ISD worker also provides complete copies of the assessment forms to the following parties:

(i) institutionalized applicant or recipient;

(ii) community spouse; and

(iii) authorized representative(s) if any.

(h) When the amount of the couple's total countable resources has been determined, the resulting amount is divided by two to determine the spousal shares. The community spouse is entitled to his or her spousal share or the MAD minimum resource allowance, whichever is greater, up to the applicable federal maximum standard or an amount determined at a HSD administrative hearing or an amount transferred pursuant to a district court order. The CSRA is the amount by which the greatest of the spousal shares or state minimum resource allowance exceeds the amount of resources otherwise available to the community spouse without regard to such an allowance. The CSRA remains in effect until one of the spouses dies. The remainder of the couple's total countable resources in excess of the CSRA is considered available to the institutionalized spouse. If either the institutionalized spouse or the community spouse is dissatisfied with the computation of the spousal share of the resources, the attribution of resources or the determination of the community spouse resource allowance, he or she can request a HSD administrative hearing pursuant to 8.352.2 NMAC. Refer to 8.352.2 NMAC for a detailed description of the HSD administrative hearing process.

(2) CSRA standards: The state minimum resource allowance and the federal maximum standards vary based on when the applicant or recipient became institutionalized for a continuous period of at least 30 consecutive days. See 8.281.500.10 NMAC for the applicable standards.

(3) CSRA revision: The CSRA can be revised if either of the following occurs:

(a) a different amount is determined by a HSD administrative hearing final decision or district court decision; or

(b) inaccurate information was provided to

the ISD worker at the time the spousal share was calculated.

(4) Resource availability after computation of CSRA: Resources of a couple remaining after the computation of the CSRA are considered available to the institutionalized spouse. These remaining resources are compared to the resource limit.

(a) From the time of the initial determination of eligibility until the first regularly scheduled redetermination, the CSRA is not considered available to the institutionalized spouse.

(b) The CSRA may be applied retroactively for the three months prior to the month of application and is not considered available to the institutionalized spouse until the first periodic review following initial approval.

(5) Resource transfer after computation of the CSRA: When eligibility has been approved for an institutionalized spouse, resources equal to the amount of the CSRA may be transferred to the community spouse. This transfer is intended to assist the community spouse in meeting his or her needs in the community. Couples should transfer resources in the amount of the CSRA to the community spouse as soon as possible after approval for a MAP category of institutional care eligibility. The institutionalized spouse or authorized representative can complete this transfer at any time between the date of the assessment and the first periodic review 12 months after approval.

(6) Resource transfers which exceed the CSRA: Resources transferred to a community spouse at less than fair market value are not subject to transfer penalties. Resources transferred to the community spouse in excess of the computed CSRA are considered available to the institutionalized spouse and must be spent down to below the resource standard before eligibility can be established. Resources transferred to the community spouse may exceed the CSRA if an increased amount is ordered by any court having jurisdiction or by the MAD director as part of a HSD administrative hearing final decision.

(7) Transfer deadlines: If the resource transfer is not completed by the institutionalized spouse by the end of the initial period of eligibility, the resources are considered completely available to the institutionalized spouse beginning with the first periodic review after the initial determination of eligibility.

(8) Newly acquired assets: After a continuous period of institutionalization begins, newly acquired resources or increases in the value of resources owned by the institutionalized spouse are countable. Recalculations of eligibility for the institutionalized spouse based on countable resources are effective at the beginning of the month following the month in which new resources were received or an increase occurred in the value of resources already owned.

(a) The institutionalized spouse may transfer newly acquired resources to the community spouse without a penalty up to the difference between the CSRA and the state minimum resource standard in effect as of the date of institutionalization.

(b) After a continuous period begins, new resources acquired by the community spouse or increases in the value of resources which are part of the CSRA are not considered available to the institutionalized spouse.

[8.281.500.15 NMAC - Rp, 8.281.500.16 NMAC, 8-15-15]

8.281.500.16 DEEMING RESOURCES: Deeming of resources applies only during periods when an eligible applicant/recipient under 18 years of age lives at home and during the month the eligible applicant or recipient enters an institution. After the initial month of entry into the institution, only those resources directly attributable to or available to the applicant or recipient are counted and compared to the $2,000 resource limit.

A. Deeming of resources for children who are blind or have a disability: If an applicant or recipient under 18 years of age who is blind or disabled enters an institution, the resources of the parent(s) are deemed to the applicant or recipient if the parent(s) live in the same household. If an ineligible parent receives temporary assistance to needy families (TANF), resources are not deemed to the applicant or recipient.

B. To determine the amount of resources deemed to the applicant or recipient, the following computation is made:

(1) determine parent(s) resources;

(2) allow parent(s) all the resource exclusions that an eligible applicant or recipient would receive;

(3) the remaining resources in excess of $2,000 for one parent or $3,000 for two parents are deemed to the applicant or recipient child; if there is more than one applicant or recipient child, the deemed resources are divided equally; and

(4) the deemed resources are added to whatever countable resources the applicant or recipient child has in his or her own right; the applicant or recipient child is eligible for a MAP category of institutional care eligibility on the factor of resources if countable resources do not exceed $2,000.

[8.281.500.16 NMAC - Rp, 8.281.500.17 NMAC, 8-15-15]

8.281.500.17 INCOME: An applicant's or recipient's gross countable monthly income must be less than the maximum allowable monthly income standard. If an applicant's or recipient's monthly gross countable income is below $50, the application can still be processed; however, the applicant or the recipient must be referred to the social security administration to apply for SSI. Income may be in the form of cash, checks, and money orders, or in-kind, including personal property or food. If income is not received in the form of cash, the cash value of the item is determined and counted as income. The ISD worker verifies all income and obtains appropriate documentation. Income is counted in the month received. Income is considered available throughout the month regardless of the date received.

A. Types of income: Countable income is the sum of unearned income or earned income, less disregards or exclusions, plus deemed income.

B. Earned income: Earned income consists of the total gross income received by an applicant or recipient for services performed as an employee or as a result of self-employment.

(1) Royalties earned in connection with the publication of an applicant's or recipient's work and any honorarium or fee received for services rendered are considered earned income.

(2) The self-employed applicant or recipient must provide an estimate of his or her current income based on the tax return filed for the previous year or current records maintained in the regular course of business. The estimate of net earnings for the entire previous taxable year is prorated equally among all months of the current year, even if the business is seasonal.

(a) Consideration is given to the applicant's or recipient's explanation as to why his or her believes the estimated net earnings for the current year vary substantially from the information shown on his or her tax return for past years.

(b) A satisfactory explanation is that the business suffered heavy loss or damage from fire, flood, burglary, serious illness or disability of the owner, or other such catastrophic events. Documentation must include copies of newspaper accounts or medical reports and must be filed in the case record to substantiate the need for a reduced estimate of current self-employment income.

C. Unearned income: Unearned income consists of all other income (minus exclusions and disregards) that is not earned in the course of employment or self-employment.

D. Deemed income: Deemed income is income considered available to a minor applicant or recipient from his or her parents.

E. Community property income methodology: If an applicant or recipient is married, community property income methodology shall be used in the eligibility determination, regardless of the living arrangements, if the one spouse has less income than the other spouse or if using the community property methodology would benefit both spouses. Under this methodology, one-half of the community property income is attributed to each spouse. Income is considered separate if it is earned in and is paid from a non-community property state. Proof of separate income is the burden of the applicant or recipient, spouse, or authorized representative.

[8.281.500.17 NMAC - Rp, 8.281.500.18 NMAC, 8-15-15]

8.281.500.18 INCOME STANDARDS: The applicable income standard used in the determination of a MAP category of institutional care eligibility for an applicant or recipient who has not been institutionalized for a period of 30 consecutive days is the SSI federal benefit rate (FBR) for a non-institutionalized individual. Participation in the medicaid home and community based waiver program is considered institutionalization and counts toward the calculation of the 30-day period. All income, whether in cash or in-kind, shall be considered in the eligibility determination, unless such income is specifically excluded or disregarded.

A. Institutionalization period of 30 consecutive days: After the applicant or recipient has been institutionalized for 30 consecutive days, the application can be approved as of the first day of the 30-day period. Once an applicant or recipient has been institutionalized for 30 consecutive days, the higher income maximum as specified in 8.200.520 NMAC is used.

B. Institutionalization period less than 30 consecutive days: If the applicant or recipient leaves the facility before 30 consecutive days, the lower income standard (SSI FBR) is used to establish eligibility.

C. Transfer or death: If an applicant or recipient transfers to another institution or dies prior to completing 30 consecutive days of institutionalization, the higher income maximum is used. See 8.200.520 NMAC.

(1) Income exclusions: Income exclusions are applied before income disregards. Exclusions are applied in determining eligibility whether the income belongs to the applicant or recipient or to an individual from whom income is deemed.

(2) Infrequent or irregular income: Exclude the first $30 per calendar quarter of earned income; and the first $60 per calendar quarter of unearned income. The following definitions apply:

(a) "Irregular income" is income received on an unscheduled or unpredictable basis.

(b) "Infrequent income" is income received only once during a calendar quarter from a single source and includes:

(i) proceeds of life insurance policies;

(ii) prizes and awards;

(iii) gifts;

(iv) support and alimony;

(v) inheritances;

(vi) interest and royalties; and

(vii) one-time lump sum payments, such as social security.

(c) "Frequency" is evaluated for the calendar quarter (i.e. January - March, April - June, July - September, October - December) but the dollar amount is considered in the month received.

(3) Foster care: Foster care payments are totally excluded if:

(a) the foster child is not eligible for SSI; and

(b) the child was placed in the applicant's or recipient's home by a public or private nonprofit child placement or child care agency.

(4) Domestic volunteer services exclusions: Payments to volunteers under domestic volunteer services (ACTION) programs are excluded from consideration as income in the eligibility determination process. These programs include the following:

(a) volunteers in service to America (VISTA);

(b) university year for action (UYA);

(c) special demonstration and volunteer programs;

(d) retired senior volunteer program (RSVP);

(e) foster grandparent program; and

(f) senior companion program.

(5) Census bureau employment: Wages paid by the census bureau for temporary employment related to the census bureau are excluded from consideration as income in the eligibility determination process.

[8.281.500.18 NMAC - Rp, 8.281.500.19 NMAC, 8-15-15]

8.281.500.19 UNEARNED INCOME: Unearned income includes all income not earned in the course of employment or self-employment. If payment is made in the name of either or both spouses and another party, only the applicant's or recipient's proportionate share is considered available to him or her. If income is derived from property for which ownership is not established, such as unprobated property, one-half of the income is considered available to each member of a married couple.

A. Standards for unearned income: Unearned income is computed on a monthly basis. If there are no expenses incurred with the receipt of unearned income, such as annuities, pensions, retirement payments or disability benefits, the gross amount is considered countable unearned income.

(1) Social security overpayments: If the social security administration withholds an amount because of an overpayment, the gross social security payment amount is used to determine eligibility. See Subsection B of 8.281.500.22 NMAC for instructions regarding calculation of the

medical care credit.

(2) Rental income: If an applicant or recipient has rental property, the ISD worker allows the cost of real estate taxes, maintenance and repairs, advertising, mortgage insurance and interest payments on the mortgage as deductions from the amount received as rent.

(3) Interest on promissory note or sales contract: The portion of the payment representing interest received from a promissory note or sales contract is considered unearned income. The market value of promissory notes or sales contracts and the portion of the payment representing payment of the principal are considered resources. See also Subsection L of 8.281.500.13 NMAC.

(4) Income from annuities, pensions and other periodic payments: Payments from annuities, pensions, social security benefits, disability, veterans benefits, worker compensation, railroad retirement annuities and unemployment insurance benefits and other periodic payments are counted as unearned income.

B. Unearned income exclusions:

(1) Interest from an excluded burial fund: Interest from an excluded burial fund is not considered unearned income if the interest is applied toward the fund balance. If the interest is paid to the applicant or recipient, it is considered unearned income.

(2) Tax refunds and earned income tax credit: Tax refunds from any public agency for property taxes or taxes on food purchases are totally excluded. Any portion of a federal income tax return which constitutes an earned income tax credit is excluded.

(3) Grants, scholarships and fellowships: All grants, scholarships and fellowships used to pay tuition and fees at an educational institution, including vocational and technical schools, are totally excluded. Any portion of a grant, scholarship or fellowship used to pay any other expenses, such as food, clothing or shelter, is not excluded.

(4) Veteran's pensions: Allowances for aid and attendance (A&A) and unusual medical expenses (UME) are excluded from unearned income for determination of eligibility. If an applicant or recipient receives an augmented VA pension as a veteran or veteran's widow or widower, the pension amount may include an increment for a dependent. If so, the VA must be contacted to provide documentation of the portion of the pension which represents the dependent's increment. When verified, this amount of the VA pension is considered the dependent's income.

(5) Payments by a third party: Third party payments are excluded as income if made directly to the applicant's or recipient's creditor.

(a) Third party payments may include mortgage payments by credit life or credit disability insurance and installment payments by a family member on a burial plot or prepaid burial contract.

(b) Interest from a burial contract that is automatically applied to the outstanding balance is excluded from unearned income. If the payment or interest is sent to the applicant or recipient, it is counted as unearned income regardless of the sender's (third party's) intentions. This applies even if the sender specifies the purpose of the payment on the check. This provision does not apply if the signature of the creditor and the applicant or recipient must both be present in order to negotiate the check (two-party check).

(6) Indian tribe per capita payments: Funds held in trust by the secretary of the interior for an Indian tribe and distributed on a per capita basis and any interest and investment income from these funds, are excluded as income and resources in the eligibility determination process and the computation of the medical care credit.

(7) Plans for achieving self-support: Income derived from, or necessary to, an approved plan for achieving self-support for a blind or disabled applicant or recipient under 65 years of age is excluded.

(a) For an applicant or recipient who is blind or disabled and over 65 years of age, this exclusion applies only if he or she received MAD services for the month preceding his or her 65th birthday.

(b) The self-support plan must be in writing and contain the following:

(i) designated occupational objective;

(ii) specification of any savings (resource) or earnings needed to complete the plan, such as amounts needed for purchase of equipment or for financial independence;

(iii) identification and segregation of any income saved to meet the occupational goal;

(iv) designation of a time period for completing the plan and achieving the occupational goal.

(c) Plans for achieving self-support are developed by vocational rehabilitation counselors. If a self-support plan is not in place, the ISD worker makes a referral to the division of vocational rehabilitation (DVR).

(d) The ISD worker forwards the written plan and documentation to the MAD eligibility unit. The plan must be approved by that unit.

(e) An approved plan is valid for the following specified time periods:

(i) initial period of no more than 18 months;

(ii) extension period of no more than 18 months;

(iii) final period of no more than 12 months; and

(iv) total period of no more than 48 months.

(8) Agent orange settlement payments: Agent orange settlement payments made to applicant or recipient veterans or their survivors are excluded from consideration as income in determining eligibility.

(9) Radiation Exposure Compensation Act payments: Payments made under the Radiation Exposure Compensation Act are excluded from consideration as income in determining eligibility.

(10) Victims compensation payments: Payments made by a state-administered fund established to aid victims of crime are excluded from consideration as income in determining eligibility. These payments are included as countable income when calculating the medical care credit.

(11) Lump sums for retroactive periods: SSI lump sum payments for retroactive periods are excluded from consideration as countable income in the month received.

(12) Life insurance and other burial benefits: Life insurance and other burial benefits are unearned income to the beneficiary (not the owner). The ISD worker must subtract the amount spent on the insured recipient's last illness or burial up to $1,500. Any excess is counted as unearned income.

(13) 100% state funded assistance payment: Any one hundred percent (100%)-state-funded assistance payment based on need, such as general assistance (GA) is excluded. Any interim payments made by a state or municipality from all state or local funds while an SSI application is pending are excluded.

(14) National vaccine injury compensation program (NVICP) payment: The NVICP funds are excluded as income or a resource until they are actually disbursed by the issuing agent. However, they are counted as income in the month in which they are received and counted as a resource in the following months, provided that the funds in question are not specifically earmarked for medical expenses. If the payment is designated for both living expenses and medical care, a determination must be made to identify how much of the payment is for living expenses, and how much is for medical care. The only portion actually counted then is that amount which is for living expenses. Therefore, a determination must be made as to how the payment is apportioned before making an eligibility determination.

(15) Remembrance, responsibility and the future payments: Payments by the remembrance, responsibility and the future foundation to individual survivors forced into slave labor by the Nazis are excluded as income in determining eligibility.

[8.281.500.19 NMAC - Rp, 8.281.500.20 NMAC, 8-15-15]

8.281.500.20 DEEMED INCOME:

A. Availability: Deemed income is income considered available to a minor applicant or recipient from his or her parents. Deeming of resources and income applies only during periods when an applicant or recipient under 18 years of age is living with his or her parents and during the month of entry into an institution.

B. Situations in which deeming occurs: Deeming of income occurs:

(1) from ineligible parent to eligible child; or

(2) if there is both a MAP eligible parent and a MAP eligible child in the home.

C. Computing deemed income: The ISD worker computes the total monthly amount of parental unearned and earned income and then computes the deemed income available to the applicant or recipient child. If the deemed income plus the child's separate income exceeds the applicable maximum, the child will not have a MAP category of institutional care eligibility for that month.

(1) Parents and children receiving aid: If one of the applicant or recipient child's parents is receiving any benefit or assistance paid by a governmental agency on the basis of economic need, that benefit plus all the income of that parent is excluded from the deeming process. This exclusion applies only to the income of the parent who receives the benefit. Even if the income of one parent is excluded, that parent is still considered a member of the household for purposes of determining the parental allocation. Provisions for deeming income do not apply to benefits under temporary assistance to needy families (TANF). No income is deemed to a parent or child(ren) if that parent or child(ren) is (are) receiving TANF assistance.

(2) Applicant or recipient parent and his or her child(ren): If a household is composed of an applicant or recipient parent and an applicant or recipient child(ren), the parent's income is determined according to the methodology appropriate to the MAP category of eligibility which he or she receives.

(a) If there is enough income to make the applicant or recipient parent ineligible, the remainder of the income is carried over to be deemed to the child(ren).

(b) If there is more than one potentially eligible child, the deemed income is divided equally among them. If total countable income is less than the applicable maximum, the applicant or recipient has a MAP category of institutional care eligibility on the factor of income.

(c) If an applicant or recipient is determined to meet the MAP category of institutional care eligibility, the ISD worker must recompute available income for the following month based on separate income to establish the correct medical care credit. See 8.281.500.23 NMAC, *post-eligibility/medical care credit*.

[8.281.500.20 NMAC - Rp, 8.281.500.21 NMAC, 8-15-15]

8.281.500.21 DISREGARDS: Income disregards are determined on an individual basis. Disregards may be applied to any appropriate month of assistance, regardless of which income maximum is used.

A. Twenty dollar disregard: The first $20 of unearned or earned income received in a month is disregarded. This disregard is applied first to unearned income and, if any amount remains, to earned income. If there is no unearned income, the entire $20 disregard is applied to earned income. This disregard is not applied to any payment made to the applicant or recipient through government assistance programs or private charitable organizations, where payments are based on need. These payments include financial assistance, TANF, assistance from catholic charities, salvation army, bureau of Indian affairs, and VA pension (not compensation) payments.

B. Additional earned income disregard: After applying the $20 disregard as specified in Subsection A of 8.281.500.21 NMAC if appropriate, the first $65 of monthly earned income plus one-half of the remainder is also disregarded.

C. Work-related expenses of the blind: Work-related expenses of an employed applicant or recipient or couple who are legally blind are disregarded. The dollar amount of expenses which may be disregarded must be reasonable. Expenses are disregarded when paid and must be verified.

(1) This disregard does not apply to an applicant or recipient who is blind and is 65 years or age or older, unless he or she was receiving SSI payments due to blindness in the month before turning 65 or received payments under a state aid to the blind program.

(2) Types of work-related expenses which may be disregarded include:

(a) federal, state, and local income taxes;

(b) social security contributions;

(c) union dues;

(d) transportation costs, including actual cost of bus/taxi cab fare, or 15 cents per mile for private automobile;

(e) lunches;

(f) child care costs, if not otherwise provided;

(g) uniforms, tools and other necessary equipment; and

(h) special expenses necessary to enable an applicant or recipient who is blind to engage in employment, such as a seeing-

eye dog or Braille instructions.

D. Student earned income disregard: Up to $1,200 per quarter or a maximum of $1,620 per calendar year of the earned income of certain students may be disregarded. To qualify for this disregard, the applicant or recipient must meet all of the following requirements:

(1) under 22 years of age;

(2) unmarried;

(3) not head of a household; and

(4) in regular attendance at a college or university, for at least 12 semester hours or vocational or technical training course for at least 20 hours per a calendar week.

(a) This disregard applies only to a student's own earned income and includes all payments made as compensation for services, such as wages from employment or self-employment, or payments from programs such as neighborhood youth corps or work-study.

(b) This disregard is available in addition to any exclusions applied to grants, scholarships or fellowships and in addition to any other allowable disregards.

E. Child support payments: One-third of the amount of child support payments made to a child applying for a MAP category of institutional care eligibility is disregarded. The remainder is considered unearned income, subject to the appropriate disregards outlined below.

[8.281.500.21 NMAC - Rp, 8.281.500.22 NMAC, 8-15-15]

8.281.500.22 POST ELIGIBILITY/MEDICAL CARE CREDIT: Once financial eligibility for a MAP category of institutional care has been established, the ISD worker must determine the following.

A. Medical care credit: The medical care credit is the amount of the applicant's or recipient's income used to reduce the MAD payment to the institution where he or she reside. An applicant or recipient must make this payment directly to the institution. Applicants or recipients eligible for a MAP category of institutional care due to institutionalization in an acute care hospital or an in-state in-patient rehabilitation center are not charged a medical care credit. The amount of the medical care credit is always determined prospectively. The ISD worker computes a medical care credit starting with the first full month of institutional care. No medical care credit is required for the month the recipient enters the institution if he or she is admitted after the first moment of the first day of the month.

(1) No medical care credit for the month of discharge or death: An applicant or recipient is not required to pay a medical care credit for the month of discharge from the institution. The medical care credit must be paid if the applicant or recipient is transferred to another institution or makes a short visit outside the institution. No medical care credit is charged for the month in which a recipient who received MAD institutional care services dies. This will prevent a deficit for the institution when a benefit, such as social security, must be returned due to the death of a beneficiary.

(2) Application delay: If there is a delay between application and approval, an applicant or recipient incurs a liability for a medical care credit. The ISD worker notifies the applicant or recipient of this liability during the application process and informs him or her of the amount of the medical care credit he or she should pay. The applicant or recipient is encouraged to pay the medical care credit to the institution before approval of the application.

(3) Medical care credit during retroactive months: No medical care credits are applied for any period of retroactive eligibility under this provision.

B. Computing the medical care credit: The current personal needs amount (PNA) of an applicant or recipient monthly income is protected for his or her personal use in a nursing facility. Each year thereafter, the amount of an applicant's or recipient's monthly income shall be adjusted according to the consumer price index as indicated in 8.200.510 NMAC. The excess over the amount protected, subject to other deductions, is applied toward payment for care in the nursing facility as a medical care credit.

(1) See Paragraph (6) of Subsection B of 8.281.500.22 NMAC for personal needs allowance for veterans or surviving spouses.

(2) An applicant's or recipient's total income, including amounts disregarded in determining eligibility, is used to compute the medical care credit with the following exceptions:

(a) Indian tribe per capita payments (see Subsection B of 8.281.500.19 NMAC);

(b) German reparation payments; and

(c) social security administration overpayments.

(i) When the social security administration withholds an amount due to an overpayment, the social security gross payment amount is used to determine eligibility per Subsection A of 8.281.500.19 NMAC. To determine the amount used in calculating the medical care credit, the ISD worker ascertains whether a social security (Title II) overpayment is being recouped or whether an SSI overpayment is being recouped from a social security benefit check (a cross-program recoupment). Cross-program recoupments are at the recipient's option so the gross benefit amount is used to calculate the medical care credit.

(ii) Recoupment of a social security overpayment from a social security benefit check is mandatory. In such cases, the net social security benefit amount is used to calculate the medical care credit.

(d) payments from the Radiation Exposure Compensation Act.

(e) 'remembrance, responsibility and the future' payments.

(3) Dependent children at home: If an institutionalized applicant or recipient with no spouse has dependent children at home who are ineligible for TANF or assistance from any other program, or are eligible for an amount less than the TANF need standard, an allowance for each child of up to the current TANF standard of need may be deducted from the institutionalized applicant's or recipient's income which is in excess of the applicant's or recipient's personal allowance.

(4) Health insurance premiums and non-covered medical expenses: An applicant or recipient is allowed a deduction in the medical care credit computation for the full amount of any health insurance premiums paid by the applicant or recipient. A deduction for the full amount of long-term care insurance and qualified state long-term care insurance partnership premiums are also allowed. A deduction of up to the medicare part B premium amount is allowed for medical expenses currently being paid by an applicant or recipient which are not covered by a MAP category of institutional care eligibility. This includes other medical

care recognized under state law but not covered by institutional care medicaid. The deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period is limited to zero.

(5) Court-ordered support: A deduction for the full amount of court-ordered child or spousal support is also allowed for the applicant or recipient.

(6) Personal needs allowance for recipients in an ICF-IID: If an applicant or recipient who is institutionalized in an intermediate care facility for individuals with intellectual disabilities (ICF-IID) has a monthly income from employment in a sheltered workshop or other work activity program, up to the first $100 of this earned income is protected for the applicant's or recipient's personal needs. This amount is in addition to the applicant's or recipient's personal needs allowance protected from income from any source. If the applicant's or recipient's income is from any other source, the personal needs allowance is set at the amount as set forth in 8.281.500.12 NMAC.

(7) Veterans administration (VA) benefits: The ISD worker must contact the VA on each veteran's case to verify how much of the benefit is for pension, aid and attendance (A&A) or unusual medical expenses (UME).

(a) For MAP eligible veterans with no spouse or dependent children, and for surviving spouses of veterans without dependent children who do not reside in a state veteran's home (Fort Bayard or Truth or Consequences):

(i) exclude the A&A and UME in the medical care credit computation;

(ii) allow the personal needs allowance as set forth in 8.281.500.12 NMAC;

(iii) the benefit for applicant or recipient will be reduced to $90 per month effective the latest of the following;

(iv) the last day of the calendar month in which medicaid coverage begins;

(v) the last date of the month following 60 calendar days after issuance of a reduction notice;

(vi) the earliest date on which payment may be reduced without creating an overpayment;

(vii) when the benefit is reduced to $90, recomputed the medical care credit to allow $90 for personal needs.

(b) For MAP eligible veterans with no spouse or dependent children, and for surviving spouses of veterans without dependent children who do reside in a state veteran's home (Fort Bayard or Truth or Consequences):

(i) include the A&A and UME in the medical care credit computation;

(ii) allow $90 for his or her personal needs;

(iii) the benefit for the applicant or recipient is not reduced to $90.

(c) Benefits for the following applicants or recipients are not reduced to $90 a month, regardless of whether or not they reside in a state veteran's home:

(i) veterans who have a spouse or dependent child(ren);

(ii) surviving spouses of veterans who have dependent child(ren).

(d) The ISD worker allows these applicants or recipients the allowance as set forth in 8.281.500.12 NMAC, for personal needs.

C. Computing medical care credits for married institutionalized applicants or recipients: To calculate the medical care credit for a married institutionalized applicant or recipient, the "name-on-the-check" rule applies. The ISD worker uses only the income belonging to the institutionalized applicant or recipient to compute his or her medical care credit. Total gross income before any deductions is used in this process.

(1) Treatment of VA aid and attendance (A&A) and unusual medical expenses (UME): Allowances for A&A and UME are considered when computing the medical credit in accordance with Subsection B of 8.281.500.22 NMAC.

(2) Court-ordered support: A deduction for the full amount of court-ordered child or spousal support is also allowed for the applicant or recipient.

D. Computing medical care credits for an institutionalized couple: To compute medical care credits for each of an eligible institutionalized couple, the ISD worker totals the couple's gross income and divides by two. The personal needs allowance as set forth in Subsection B of 8.281.500.22 NMAC is subtracted from each amount for each applicant's or recipient's personal needs and added to any allowable amount(s) paid by that applicant or recipient for noncovered medical expenses.

E. Medical care credit deductions: The ISD worker applies the deductions listed below in the following order when determining the medical care credit:

(1) institutionalized spouse's personal needs allowance as set forth in 8.281.500.12 NMAC;

(2) community spouse monthly income allowance (CSMIA); the CSMIA deduction is permitted only to the extent that the income is available and is actually contributed to and accepted by the community spouse or other dependent family members:

(a) the CSMIA is calculated by starting with the minimum monthly maintenance needs allowance (MMMNA) and subtracting the community spouse's total gross income;

(b) both spouses shall be given notice of the amount of the CSMIA;

(c) if either spouse is dissatisfied with the amount of the CSMIA, he or she can request a HSD administrative hearing pursuant to 8.352.2 NMAC, to establish that the community spouse needs income above the minimum monthly maintenance needs allowance; the spouse must demonstrate that the community spouse needs the additional income above the level otherwise provided by the minimum monthly maintenance needs allowance due to exceptional circumstances resulting in significant financial duress; if the spouse establishes that the community spouse needs additional income due to exceptional circumstances resulting in significant financial duress, there shall be substituted for the CSMIA such amount as is necessary to alleviate the financial duress and for so long as the exceptional circumstances exist; if as a result of a HSD administrative hearing final decision or district court hearing, additional income is granted to the community spouse for a specified period of time, when that time expires, the original CSMIA, as calculated by the ISD worker is reinstated; the exceptional circumstances can include medical, remedial or other support expenses that jeopardize the ability of the community spouse to remain self-sufficient in the community;

(d) if as a result of a district court hearing or a HSD administrative hearing final decision,

a request for a revision of the CSMIA is granted, the revised amount shall be substituted for the CSMIA calculated by the ISD worker; and

(e) when the institutionalized applicant's or recipient's income is insufficient to provide the minimum authorized deduction for the community spouse, either spouse can request a HSD administrative hearing pursuant to 8.352.2.NMAC if either spouse establishes that the CSRA (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the MMMNA, there shall be substituted, for the CSRA, an amount adequate to provide the MMMNA;

(3) an excess shelter allowance for allowable expenses of the community spouse which exceed thirty percent (30%) of the MMMNA standard up to a specified maximum; the following expenses are allowed for the primary residence of the community spouse:

(a) rent or mortgage payment, including interest or principal;

(b) home taxes and insurance;

(c) maintenance charges for a condominium or cooperative; and

(d) amount equal to the standard utility allowance used by the food stamp program if the community spouse incurs a heating or cooling expense; utility expenses included in the rent or the basic maintenance fee for a condominium or cooperative, are not allowed.

(4) The total CSMIA and excess shelter allowance combined may not exceed the standard amount per month, unless the MAD director or a district court orders the institutionalized spouse to pay an increased amount.

(5) An allowance for each eligible family member equal to one-third of the balance obtained after deducting the family member's gross income from the MMMNA. Family members include the couple's minor child(ren) under the age of 18 years, disabled adult child(ren) of the couple who meet the social security administration's definition of disability and dependent sibling(s) or parent(s) of the couple. These family members must reside with the community spouse. The dependency requirements are met if either member of the couple could claim the family member as a dependent for tax purposes.

(6) The deductions for the community spouse and dependent family members apply only so long as there is a community spouse. Deductions for the community spouse and other family members shall cease in the first full calendar month after the community spouse dies, becomes divorced, or is institutionalized.

(7) Health insurance premiums and non-covered medical expense deduction.

F. Reporting requirements: An applicant or recipient, spouse, or authorized representative is required to report to the ISD worker any change in circumstances which may affect eligibility or the medical care credit amount within 10 working days after the date the change occurs. Changes which cause adjustments in an applicant's or recipient's medical care credit amount are effective the month after the change occurs. Family members receiving allowances must also report all changes of gross income and residence within 10 working days after the date the change occurs. Changes must be reported when the institutionalized spouse stops making all or part of a maintenance allowance available to the community spouse or other family member(s), or when the recipient of a maintenance allowance begins to refuse all or part of the income.

G. Changes in income and recipient medical care credit: Payments received by an applicant or recipient, such as social security, VA, retirement or other benefits, are applied to billing for services for the same month in which the payment is received. If the income increases, the institution must continue to collect the amount indicated on the medical care credit report in the eligible recipient's file and immediately advise the ISD worker of the change. The ISD worker processes the change, notifies the institution and the eligible recipient of the new medical care credit amount and indicates the month in which the higher amount is to be collected. The difference between the medical care credit amounts is deposited in the eligible recipient's personal fund account until the change is effective.

[8.281.500.22 NMAC - Rp, 8.281.500.23 NMAC, 8-15-15]

8.281.500.23 UNDUE HARDSHIP: An applicant or recipient subject to a penalty for transfer of assets for less than fair market value may apply for a waiver of the regulation regarding transfer of assets as constituting an undue hardship. The facility where an institutionalized applicant or recipient resides may file an application for waiver of the requirement on behalf of the applicant or recipient with the applicant's or recipient's or authorized representative's consent.

A. The transfer must have been made to someone other than a family member. "Family member" includes son, daughter, grandson, granddaughter, step-son, step-daughter, in-laws, mother, father, step-mother, step-father, half-brother, half-sister, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, step-sister, step-brother.

B. The applicant or recipient must demonstrate that the application of the transfer of assets regulation would deprive the applicant or recipient of:

(1) medical care such that the applicant's or recipient's health or life would be endangered; or

(2) food, clothing, shelter or other necessities of life.

C. The applicant or recipient or the facility where the applicant or recipient resides must submit any documentation to support the claim that application of the transfer of assets requirement would constitute an undue hardship within 30 calendar days of the date of the notice regarding the penalty to the ISD county office.

D. Undue hardship does not exist when the application of a transfer penalty causes an applicant or recipient or his or her family members inconvenience or restricts their lifestyle.

E. The county director of the ISD office will make a decision regarding an application for waiver of the transfer of assets requirements within 30 calendar days of receipt of the application.

(1) Notice of the decision shall be mailed to the applicant or recipient or his or her authorized representative.

(2) MAD may make payments to the nursing facility for an applicant or recipient who is a resident of the facility while an application for waiver of the requirement is pending to hold the bed for the applicant or recipient. HSD may make payments for no more than 30 calendar days.

F. If the applicant's or recipient's application for waiver of the transfer of assets requirement is granted, MAD shall pay for long-term care services prospective from the date

of the application. MAD shall pay for long-term care services as long as the circumstances constituting the basis for waiver of the application of the requirement exist. If the applicant's or recipient's application for waiver of the transfer of assets requirement is denied, the applicant or recipient can request a HSD administrative hearing pursuant to 8.352.2 NMAC within 90 calendar days of the date of the notice of denial.

G. The applicant or recipient or his or her authorized representative must notify the ISD worker of any change in circumstances which affects the application of the undue hardship waiver exception within 10 working days of the change in circumstances. MAD will review the change of circumstances and determine the next appropriate action, which may include withdrawal of the waiver.
[8.281.500.23 NMAC - Rp, 8.281.500.24 NMAC, 8-15-15]

HISTORY OF 8.281.500 NMAC: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:
ISD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 12-29-83.
ISD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 8-11-87.
MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 2-5-88.
MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 2-25-88.
MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 6-1-88.
MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 1-31-89.
MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, 6-21-89.
MAD Rule 880.0000, Medical Assistance for Persons Requiring Institutional Care, 3-21-90.
MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, 5-3-91.
MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, 6-12-92.
MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, 11-16-94.
MAD Rule 889, Spousal Impoverishment, 8-17-92.
MAD Rule 889, Spousal Impoverishment, 2-17-94.
MAD Rule 882, Resources - Medical Assistance for Persons Requiring Institutional Care, 3-9-93.
MAD Rule 882, Medical Assistance for Persons Requiring Institutional Care, 11-16-94.
MAD Rule 882, Resources, 12-29-94.
MAD Rule 883, Income - Medical Assistance for Persons Requiring Institutional Care, 3-18-93.
MAD Rule 883, Income - Medical Assistance for Persons Requiring Institutional Care, 11-16-94.
MAD Rule 883, Income, 12-29-94.
MAD Rule 888, Medicare Catastrophic Coverage Act of 1988 Regarding Transfers Of Assets, 3-10-94.
MAD Rule 888, Transfers of Assets, 12-27-94.
MAD Rule 885, Medical Care Credit, 11-16-94.

History of Repealed Material:
8.281.500 NMAC, Income and Resource Standards, filed 2-15-01 - Repealed effective 8-15-15.

WATER QUALITY CONTROL COMMISSION

This is an amendment to 20.6.2 NMAC, amending Sections 3106, 3107, 3109, 5001-5004, 5101-5104, 5200, 5201, 5204, 5209, 5210 and adding Sections 5300-5363, effective 08/31/2015.

20.6.2.3106 APPLICATION FOR DISCHARGE PERMITS AND RENEWALS:

A. Any person who, before or on June 18, 1977, is discharging any of the water contaminants listed in [~~Section~~] 20.6.2.3103 NMAC or any toxic pollutant so that they may move directly or indirectly into ground water shall, within 120 days of receipt of written notice from the secretary that a discharge permit is required, or such longer time as the secretary shall for good cause allow, submit a discharge plan to the secretary for approval; such person may discharge without a discharge permit until 240 days after written notification by the secretary that a discharge permit is required or such longer time as the secretary shall for good cause allow.

B. Any person who intends to begin, after June 18, 1977, discharging any of the water contaminants listed in [~~Section~~] 20.6.2.3103 NMAC or any toxic pollutant so that they may move directly or indirectly into ground water shall notify the secretary giving the information enumerated in Subsection B of [~~Section~~] 20.6.2.1201 NMAC; the secretary shall, within 60 days, notify such person if a discharge permit is required; upon submission, the secretary shall review the discharge plan pursuant to [~~Sections~~] 20.6.2.3108 and 20.6.2.3109 NMAC. For good cause shown the secretary may allow such person to discharge without a discharge permit for a period not to exceed 120 days.

C. A proposed discharge plan shall set forth in detail the methods or techniques the discharger proposes to use or processes expected to naturally occur which will ensure compliance with this part. At least the following information shall be included in the plan:

(1) quantity, quality and flow characteristics of the discharge;

(2) location of the discharge and of any bodies of water, watercourses and ground water discharge sites within one mile of the outside perimeter of the discharge site, and existing or proposed wells to be used for monitoring;

(3) depth to and TDS concentration of the ground water most likely to be affected by the discharge;

(4) flooding potential of the site;

(5) location and design of site(s) and method(s) to be available for sampling, and for measurement or calculation of flow;

(6) depth to and lithological description of rock at base of alluvium below the discharge site if such information is available;

(7) any additional information that may be necessary to demonstrate that the discharge permit will not result in concentrations in excess of the standards of [~~Section~~] 20.6.2.3103 NMAC or the presence of any toxic pollutant at any place of withdrawal of water for present or reasonably foreseeable future use; detailed information on site geologic and hydrologic conditions may be required for a technical evaluation of the applicant's proposed discharge plan; and

(8) additional detailed information required for a technical evaluation of underground injection control wells as provided in [~~Sections~~] 20.6.2.5000 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC.

D. An applicant for a discharge permit shall pay fees as

specified in [~~Section~~] 20.6.2.3114 and 20.6.2.5302 NMAC.

E. An applicant for a permit to dispose of or use septage or sludge, or within a source category designated by the commission, may be required by the secretary to file a disclosure statement as specified in 74-6-5.1 of the Water Quality Act.

F. If the holder of a discharge permit submits an application for discharge permit renewal at least 120 days before the discharge permit expires, and the discharger is not in violation of the discharge permit on the date of its expiration, then the existing discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved. A discharge permit continued under this provision remains fully effective and enforceable. An application for discharge permit renewal must include and adequately address all of the information necessary for evaluation of a new discharge permit. Previously submitted materials may be included by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

[2-18-77, 6-26-80, 7-2-81, 9-20-82, 8-17-91, 12-1-95; 20.6.2.3106 NMAC - Rn, 20 NMAC 6.2.III.3106, 1-15-01; A, 12-1-01; A, 9-15-02; A, 8-31-15]

20.6.2.3107 MONITORING, REPORTING, AND OTHER REQUIREMENTS:

A. Each discharge plan shall provide for the following as the secretary may require:

(1) the installation, use, and maintenance of effluent monitoring devices;

(2) the installation, use, and maintenance of monitoring devices for the ground water most likely to be affected by the discharge;

(3) monitoring in the vadose zone;

(4) continuation of monitoring after cessation of operations;

(5) periodic submission to the secretary of results obtained pursuant to any monitoring requirements in the discharge permit and the methods used to obtain these results;

(6) periodic reporting to the secretary of any other information that may be required as set forth in the discharge permit;

(7) the discharger to retain for a period of at least five years any monitoring data required in the discharge permit;

(8) a system of monitoring and reporting to verify that the permit is achieving the expected results;

(9) procedures for detecting failure of the discharge system;

(10) contingency plans to cope with failure of the discharge permit or system;

(11) a closure plan to prevent the exceedance of standards of [~~Section~~] 20.6.2.3103 NMAC or the presence of a toxic pollutant in ground water after the cessation of operation which includes: a description of closure measures, maintenance and monitoring plans, post-closure maintenance and monitoring plans, financial assurance, and other measures necessary to prevent [~~and/or~~] or abate such contamination; the obligation to implement the closure plan as well as the requirements of the closure plan, if any is required, survives the termination or expiration of the permit; a closure plan for any underground injection control well must also incorporate the applicable requirements of [~~Sections~~] 20.6.2.5005, [~~and~~] 20.6.2.5209, and 20.6.2.5361 NMAC.

B. Sampling and analytical techniques shall conform with the following references unless otherwise specified by the secretary:

(1) standard methods for the examination of water and wastewater, latest edition, American public health association; or

(2) methods for chemical analysis of water and waste, and other publications of the analytical quality laboratory, EPA; or

(3) techniques of water resource investigations of the U.S. geological survey; or

(4) annual book of ASTM standards; Part 31; water, latest edition, American society for testing and materials; or

(5) federal register, latest methods published for monitoring pursuant to Resource Conservation and Recovery Act regulations; or

(6) national handbook of recommended methods for water-data acquisition, latest edition, prepared cooperatively by agencies of the United States government under the sponsorship of the U.S. geological survey.

C. The discharger shall notify the secretary of any facility expansion, production increase or process modification that would result in any significant modification in the discharge of water contaminants.

D. Any discharger of effluent or leachate shall allow any authorized representative of the secretary to:

(1) inspect and copy records required by a discharge permit;

(2) inspect any treatment works, monitoring and analytical equipment;

(3) sample any effluent before or after discharge;

(4) use monitoring systems and wells installed pursuant to a discharge permit requirement in order to collect samples from ground water or the vadose zone.

E. Each discharge permit for an underground injection control well shall incorporate the applicable requirements of [~~Sections~~] 20.6.2.5000 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC.

[2-18-77, 9-20-82, 11-17-83, 12-1-95; 20.6.2.3107 NMAC - Rn, 20 NMAC 6.2.III.3107, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.3109 SECRETARY APPROVAL, DISAPPROVAL, MODIFICATION OR TERMINATION OF DISCHARGE PERMITS, AND REQUIREMENT FOR ABATEMENT PLANS:

A. The department shall evaluate the application for a discharge permit, modification or renewal based on information contained in the department's administrative record. The department may request from the discharger, either before or after the issuance of any public notice, additional information necessary for the evaluation of the application. The administrative record shall consist of the application, any additional information required by the department, any information submitted by the discharger or the general public, other information considered by the department, the proposed approval or disapproval of an application for a discharge permit, modification or renewal prepared pursuant to Subsection G of 20.6.2.3108 NMAC, and, if a public hearing is held, all of the documents filed with the hearing clerk, all exhibits offered into evidence at the hearing, the written transcript or tape recording of the hearing, any hearing officer report, and any post hearing submissions.

B. The secretary shall, within 30 days after the administrative

record is complete and all required information is available, approve, approve with conditions or disapprove the proposed discharge permit, modification or renewal based on the administrative record. The secretary shall give written notice of the action taken to the applicant or permittee and any other person who participated in the permitting action who requests a copy in writing.

C. Provided that the other requirements of this part are met and the proposed discharge plan, modification or renewal demonstrates that neither a hazard to public health nor undue risk to property will result, the secretary shall approve the proposed discharge plan, modification or renewal if the following requirements are met:

(1) ground water that has a TDS concentration of 10,000 mg/l or less will not be affected by the discharge; or

(2) the person proposing to discharge demonstrates that approval of the proposed discharge plan, modification or renewal will not result in either concentrations in excess of the standards of 20.6.2.3103 NMAC or the presence of any toxic pollutant at any place of withdrawal of water for present or reasonably foreseeable future use, except for contaminants in the water diverted as provided in Subsection D of 20.6.2.3109 NMAC; or

(3) the proposed discharge plan conforms to either Subparagraph (a) or (b) below and Subparagraph (c) below:

(a) municipal, other domestic discharges, and discharges from sewerage systems handling only animal wastes: the effluent is entirely domestic, is entirely from a sewerage system handling only animal wastes or is from a municipality and conforms to the following:

(i) the discharge is from an impoundment or a leach field existing on February 18, 1977 which receives less than 10,000 gallons per day and the secretary has not found that the discharge may cause a hazard to public health; or

(ii) the discharger has demonstrated that the total nitrogen in effluent that enters the subsurface from a leach field or surface impoundment will not exceed 200 pounds per acre per year and that the effluent will meet the standards of 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection D of 20.6.2.3109 NMAC; or

(iii) the total nitrogen in effluent that is applied to a crop which is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop and the effluent shall meet the standards of 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection D of 20.6.2.3109 NMAC;

(b) discharges from industrial, mining or manufacturing operations:

(i) the discharger has demonstrated that the amount of effluent that enters the subsurface from a surface impoundment will not exceed 0.5 acre-feet per acre per year; or

(ii) the discharger has demonstrated that the total nitrogen in effluent that enters the subsurface from a leach field or surface impoundment shall not exceed 200 pounds per acre per year and the effluent shall meet the standards of 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection D of 20.6.2.3109 NMAC; or

(iii) the total nitrogen in effluent that is applied to a crop that is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop and the effluent shall meet the standards of 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection D of 20.6.2.3109 NMAC;

(c) all discharges:

(i) the monitoring system proposed in the discharge plan includes adequate provision for sampling of effluent and adequate flow monitoring so that the amount being discharged onto or below the surface of the ground can be determined;

(ii) the monitoring data is reported to the secretary at a frequency determined by the secretary.

D. The secretary shall allow the following unless he determines that a hazard to public health may result:

(1) the weight of water contaminants in water diverted from any source may be discharged provided that the discharge is to the aquifer from which the water was diverted or to an aquifer containing a greater concentration of the contaminants than contained in the water diverted; and provided further that contaminants added as a result of the means of diversion shall not be considered to be part of the weight of water contaminants in the water diverted;

(2) the water contaminants leached from undisturbed natural materials may be discharged provided that:

(a) the contaminants were not leached as a product or incidentally pursuant to a solution mining operation; and

(b) the contaminants were not leached as a result of direct discharge into the vadose zone from municipal or industrial facilities used for the storage, disposal, or treatment of effluent;

(3) the water contaminants leached from undisturbed natural materials as a result of discharge into ground water from lakes used as a source of cooling water.

E. If data submitted pursuant to any monitoring requirements specified in the discharge permit or other information available to the secretary indicates that this part is being or may be violated or that the standards of 20.6.2.3103 NMAC are being or will be exceeded, or a toxic pollutant as defined in 20.6.2.7 NMAC is present, in ground water at any place of withdrawal for present or reasonably foreseeable future use, or that the water quality standards for interstate and intrastate streams in New Mexico are being or may be violated in surface water, due to the discharge, except as provided in Subsection D of 20.6.2.3109 NMAC.

(1) The secretary may require a discharge permit modification within the shortest reasonable time so as to achieve compliance with this part and to provide that any exceeding of standards in ground water at any place of withdrawal for present or reasonably foreseeable future use, or in surface water, due to the discharge except as provided in Subsection D of 20.6.2.3109 NMAC will be abated or prevented. If the secretary requires a discharge permit modification to abate water pollution:

(a) the abatement shall be consistent with the requirements and provisions of 20.6.2.4101, 20.6.2.4103, [~~Subsection~~] Subsections C and E of 20.6.2.4106, 20.6.2.4107, 20.6.2.4108 and 20.6.2.4112 NMAC; and

(b) the discharger may request of the secretary

approval to carry out the abatement under 20.6.2.4000 through 20.6.2.4115 NMAC, in lieu of modifying the discharge permit; the discharger shall make the request in writing and shall include the reasons for the request.

(2) The secretary may terminate a discharge permit when a discharger fails to modify the permit in accordance with Paragraph (1) of Subsection E of 20.6.2.3109 NMAC.

(3) The secretary may require modification, or may terminate a discharge permit for a Class I [~~non-hazardous waste injection~~] well, a Class III well or other type of well specified in Subsection A of 20.6.2.5101 NMAC, pursuant to the requirements of Subsection I of 20.6.2.5101 NMAC.

F. If a discharge permit expires or is terminated for any reason and the standards of 20.6.2.3103 NMAC are being or will be exceeded, or a toxic pollutant as defined in 20.6.2.7 NMAC is present in ground water, or that the water quality standards for interstate and intrastate streams in New Mexico are being or may be violated, the secretary may require the discharger to submit an abatement plan pursuant to 20.6.2.4104 and Subsection A of 20.6.2.4106 NMAC.

G. At the request of the discharger, a discharge permit may be modified in accordance with 20.6.2.3000 through 20.6.2.3114 NMAC.

H. The secretary shall not approve a proposed discharge plan, modification, or renewal for:

(1) any discharge for which the discharger has not provided a site and method for flow measurement and sampling;

(2) any discharge that will cause any stream standard to be violated;

(3) the discharge of any water contaminant which may result in a hazard to public health; or

(4) a period longer than five years, except that for new discharges, the term of the discharge permit approval shall commence on the date the discharge begins, but in no event shall the term of the approval exceed seven years from the date the permit was issued; for those permits expiring more than five years from the date of issuance, the discharger shall give prior written notification to the department of the date the discharge is to commence; the term of the permit shall not exceed five years from that date.

[2-18-77, 6-26-80, 9-20-82, 7-2-81, 3-3-86, 12-1-95, 11-15-96; 20.6.2.3109 NMAC - Rn, 20 NMAC 6.2.III.3109, 1-15-01; A, 12-1-01; A, 9-15-02; A, 7-16-06; A, 8-31-15]

20.6.2.5001 PURPOSE: The purpose of [~~Sections~~] 20.6.2.5000 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC controlling discharges from underground injection control wells is to protect all ground water of the state of New Mexico which has an existing concentration of 10,000 mg/l or less TDS, for present and potential future use as domestic and agricultural water supply, and to protect those segments of surface waters which are gaining because of ground water inflow for uses designated in the New Mexico water quality standards. [~~Sections~~] 20.6.2.5000 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC include notification requirements, and requirements for discharges directly into the subsurface through underground injection control wells.

[20.6.2.5001 NMAC - N, 12-1-01; A, 8-31-15]

20.6.2.5002 UNDERGROUND INJECTION CONTROL WELL CLASSIFICATIONS:

A. Underground injection control wells include the following.

(1) Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.

(2) Any septic tank or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste.

(3) Any subsurface distribution system, cesspool or other well which is used for the injection of wastes.

B. Underground injection control wells are classified as follows:

(1) Class I wells inject fluids beneath the lowermost formation that contains 10,000 milligrams per liter or less TDS. Class I hazardous or radioactive waste injection wells inject fluids containing any hazardous or radioactive waste as defined in 74-4-3 and 74-4A-4 NMSA 1978 or 20.4.1.200 NMAC (incorporating 40 C.F.R. Section 261.3), including any combination of these wastes. Class I non-hazardous waste injection wells inject non-hazardous and non-radioactive fluids, and they inject naturally-occurring radioactive material (NORM) as provided by [~~Section~~] 20.3.1.1407 NMAC.

(2) Class II wells inject fluids associated with oil and gas recovery;

(3) Class III wells inject fluids for extraction of minerals or other natural resources, including sulfur, uranium, metals, salts or potash by in situ extraction. This classification includes only in situ production from ore bodies that have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.

(4) Class IV wells inject fluids containing any radioactive or hazardous waste as defined in 74-4-3 and 74-4A-4 NMSA 1978, including any combination of these wastes, above or into a formation that contains 10,000 mg/l or less TDS.

(5) Class V wells inject a variety of fluids and are those wells not included in Class I, II, III or IV. Types of Class V wells include, but are not limited to, the following:

(a) domestic liquid waste injection wells:

(i) domestic liquid waste disposal wells used to inject liquid waste volumes greater than that regulated by 20.7.3 NMAC through subsurface fluid distribution systems or vertical wells;

(ii) septic system wells used to emplace liquid waste volumes greater than that regulated by 20.7.3 NMAC into the subsurface, which are comprised of a septic tank and subsurface fluid distribution system;

(iii) large capacity cesspools used to inject liquid waste volumes greater than that regulated by 20.7.3 NMAC, including drywells that sometimes have an open bottom [~~and/or~~] or perforated sides;

(b) industrial waste injection wells:

(i) air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling;

(ii) dry wells used for the injection of wastes into a subsurface formation;

(iii) geothermal energy injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electrical power;

(iv) stormwater drainage wells used to inject storm runoff from the surface into the subsurface;

(v) motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities;

(vi) car wash waste disposal wells used to inject fluids from motor vehicle washing activities;

(c) mining injection wells:

(i) stopes leaching wells used for solution mining of conventional mines;

(ii) brine injection wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts;

(iii) backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines whether water injected is a radioactive waste or not;

(iv) injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale;

(d) ground water management injection wells:

(i) ground water remediation injection wells used to inject contaminated ground water that has been treated to ground water quality standards;

(ii) in situ ground water remediation wells used to inject a fluid that facilitates vadose zone or ground water remediation.

(iii) recharge wells used to replenish the water in an aquifer, including use to reclaim or improve the quality of existing ground water;

(iv) barrier wells used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality;

(v) subsidence control wells (not used for purposes of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(vi) wells used in experimental technologies;

(e) agricultural injection wells - drainage wells used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality.

[20.6.2.5002 NMAC - N, 12-1-01; A, 8-1-14; A, 8-31-15]

20.6.2.5003 NOTIFICATION AND GENERAL OPERATION REQUIREMENTS FOR ALL UNDERGROUND INJECTION CONTROL WELLS: All operators of underground injection control wells, except those wells regulated under the Oil and Gas Act, the Geothermal Resources Conservation Act, and the Surface Mining Act, shall:

A. for existing underground injection control wells, submit to the secretary the information enumerated in Subsection C of [~~Section~~] 20.6.2.1201 NMAC of this part; provided, however, that if the information in Subsection C of [~~Section~~] 20.6.2.1201 NMAC has been previously submitted to the secretary and acknowledged by him, the information need not be resubmitted; and

B. operate and continue to operate in conformance with [~~Sections~~] 20.6.2.1 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC;

C. for new underground injection control wells, submit to the secretary the information enumerated in Subsection C of [~~Section~~] 20.6.2.1201 NMAC of this part at least 120 days prior to well construction.

[9-20-82, 12-1-95; 20.6.2.5300 NMAC - Rn, 20 NMAC 6.2.V.5300, 1-15-01; 20.6.2.5003 NMAC - Rn, 20.6.2.5300 NMAC, 12-1-01; A, 12-1-01; A, 9-15-02; A, 8-31-15]

20.6.2.5004 PROHIBITED UNDERGROUND INJECTION CONTROL ACTIVITIES AND WELLS:

A. No person shall perform the following underground injection activities nor operate the following underground injection control wells.

(1) The injection of fluids into a motor vehicle waste disposal well is prohibited. Motor vehicle waste disposal wells are prohibited. Any person operating a new motor vehicle waste disposal well (for which construction began after April 5, 2000) must close the well immediately. Any person operating an existing motor vehicle waste disposal well must cease injection immediately and must close the well by December 31, 2002, except as provided in this subsection.

(2) The injection of fluids into a large capacity cesspool is prohibited. Large capacity cesspools are prohibited. Any person operating a new large capacity cesspool (for which construction began after April 5, 2000) must close the cesspool immediately. Any person operating an existing large capacity cesspool must cease injection immediately and must close the cesspool by December 31, 2002.

(3) The injection of any hazardous or radioactive waste into a well is prohibited, except as provided in 20.6.2.5300 through 20.6.2.5399 NMAC or this subsection.

(a) Class I [~~hazardous or~~] radioactive waste injection wells are prohibited, except naturally-occurring radioactive material (NORM) regulated under [~~Section~~] 20.3.1.1407 NMAC is allowed as a Class I non-hazardous waste injection well pursuant to Paragraph (1) of Subsection B [~~(1)~~] of [~~Section~~] 20.6.2.5002 NMAC.

(b) Class IV wells are prohibited, except for wells re-injecting treated ground water into the same formation from which it was drawn as part of a removal or remedial action if the injection has prior approval from the environmental protection agency (EPA) or the department under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA).

(4) Barrier wells, drainage wells, recharge wells, return flow wells, and motor vehicle waste disposal wells are prohibited, except when the discharger can demonstrate that the discharge will not adversely affect the health of persons, and

(a) the injection fluid does not contain a contaminant which may cause an exceedance at any place of present or reasonable foreseeable future use of any primary state drinking water maximum contaminant level as specified in the water supply regulations, "Drinking Water" [~~(20 NMAC 7.1)~~] (20.7.10 NMAC), adopted by the environmental improvement board under the Environmental Improvement Act or the standard of [~~Section~~] 20.6.2.3103 NMAC, whichever is more stringent;

(b) the discharger can demonstrate that the injection will result in an overall or net improvement in water quality as determined by the secretary.

B. Closure of prohibited underground injection control wells shall be in accordance with [~~Section~~] 20.6.2.5005 [~~NMAC~~] and [~~Section~~] 20.6.2.5209 NMAC.

[20.6.2.5004 NMAC - N, 12-1-01; A, 8-31-15]

20.6.2.5101 DISCHARGE PERMIT AND OTHER REQUIREMENTS FOR CLASS I [~~NON-HAZARDOUS WASTE INJECTION~~] WELLS AND CLASS III WELLS:

A. Class I [~~non-hazardous waste injection~~] wells and Class III wells must meet the requirements of [~~Sections~~] 20.6.2.5000 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC in addition to other applicable requirements of the commission regulations. The secretary may also require that some Class IV and Class V wells comply with the requirements for Class I [~~non-hazardous waste injection~~] wells in [~~Sections~~] 20.6.2.5000 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC if the secretary determines that the additional requirements are necessary to prevent the movement of water contaminants from a specified injection zone into ground water having 10,000 mg/l or less TDS. No Class I [~~non-hazardous waste injection~~] well or Class III well may be approved which allows for movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to [~~Section~~] 20.6.2.5103 NMAC, or pursuant to a temporary designation as provided in Paragraph (2) of Subsection C of [~~Section~~] 20.6.2.5101 NMAC.

B. Operation of a Class I [~~non-hazardous waste injection~~] well or Class III well must be pursuant to a discharge permit meeting the requirements of [~~Sections~~] 20.6.2.3000 through 20.6.2.3999 NMAC and [~~Sections~~] 20.6.2.5000 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC.

C. Discharge permits for Class I [~~non-hazardous waste injection~~] wells, or Class III wells affecting ground water of 10,000 mg/l or less TDS submitted for secretary approval shall:

(1) receive an aquifer designation if required in [~~Section~~] 20.6.2.5103 NMAC prior to discharge permit issuance; or

(2) for Class III wells only, address the methods or techniques to be used to restore ground water so that upon final termination of operations including restoration efforts, ground water at any place of withdrawal for present or reasonably foreseeable future use will not contain either concentrations in excess of the standards of [~~Section~~] 20.6.2.3103 NMAC or any toxic pollutant; issuance of a discharge permit or project discharge permit for Class III wells that provides for restoration of ground water in accordance with the requirements of this subsection shall substitute for the aquifer designation provisions of [~~Section~~] 20.6.2.5103 NMAC; the approval shall constitute a temporary aquifer designation for a mineral bearing or producing aquifer, or portion thereof, to allow injection as provided for in the discharge permit; such temporary designation shall expire upon final termination of operations including restoration efforts.

D. The exemptions from the discharge permit requirement listed in [~~Section~~] 20.6.2.3105 NMAC do not apply to underground injection control wells except as provided below:

(1) wells regulated by the oil conservation division under the exclusive authority granted under Section 70-2-12 NMSA 1978 or under other sections of the "Oil and Gas Act";

(2) wells regulated by the oil conservation division under the "Geothermal Resources Act";

(3) wells regulated by the New Mexico coal surface mining bureau under the "Surface Mining Act";

(4) wells for the disposal of effluent from systems which are regulated under the "Liquid Waste Disposal and Treatment" regulations [~~(20 NMAC 7.3)~~] (20.7.3 NMAC) adopted by the environmental improvement board under the "Environmental Improvement Act".

E. Project permits for Class III wells.

(1) The secretary may consider a project discharge permit for Class III wells, if the wells are:

(a) within the same well field, facility site or similar unit;

(b) within the same aquifer and ore deposit;

(c) of similar construction;

(d) of the same purpose; and

(e) operated by a single owner or operator.

(2) A project discharge permit does not allow the discharger to commence injection in any individual operational area until the secretary approves an application for injection in that operational area (operational area approval).

(3) A project discharge permit shall:

(a) specify the approximate locations and number of wells for which operational area approvals are or will be sought with approximate time frames for operation and restoration (if restoration is required) of each area; and

(b) provide the information required under the following sections of this part, except for such additional site-specific information as needed to evaluate applications for individual operational area approvals: Subsection C of [~~Section~~] 20.6.2.3106, [~~Sections~~] 20.6.2.3107, 20.6.2.5204 through 20.6.2.5209, and Subsection B of [~~Section~~] 20.6.2.5210 NMAC.

(4) Applications for individual operational area approval shall include the following:

(a) site-specific information demonstrating that the requirements of this part are met; and

(b) information required under [~~Sections~~] 20.6.2.5202 through 20.6.2.5210 NMAC and not previously provided pursuant to Subparagraph (b) of Paragraph (3) of Subsection E of this section.

(5) Applications for project discharge permits and for operational area approval shall be processed in accordance with the same procedures provided for discharge permits under [~~Sections~~] 20.6.2.3000 through 20.6.2.3114 NMAC, allowing for public notice on the project discharge permit and on each application for operational area approval pursuant to [~~Section~~] 20.6.2.3108 NMAC with opportunity for public hearing prior to approval or disapproval.

(6) The discharger shall comply with additional requirements that may be imposed by the secretary pursuant to this part on wells in each new operational area.

F. If the holder of a discharge permit for a Class I [~~non-hazardous waste injection~~] well, or Class III well submits an application for discharge permit renewal at least 120 days before discharge permit expiration, and the discharger is in compliance with his discharge permit on the date of its expiration, then the existing discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved. An application for discharge permit renewal must include and adequately address all of the information necessary for evaluation of a new discharge permit. Previously submitted materials may be included by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

G. Discharge permit signatory requirements: No discharge

permit for a Class I [~~non-hazardous waste injection~~] well or Class III well may be issued unless:

(1) the application for a discharge permit has been signed as follows:

(a) for a corporation: by a principal executive officer of at least the level of vice-president, or a representative who performs similar policy-making functions for the corporation who has authority to sign for the corporation; or

(b) for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) for a municipality, state, federal, or other public agency: by either a principal executive officer who has authority to sign for the agency, or a ranking elected official; and

(2) all reports required by Class I hazardous waste injection well permits and other information requested by the director pursuant to a Class I hazardous waste injection well permit shall be signed by a person described in Paragraph (1) of this subsection, or by a duly authorized representative of that person; a person is a duly authorized representative only if:

(a) the authorization is made in writing by a person described in Paragraph (1) of this subsection;

(b) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) the written authorization is submitted to the director.

(3) *Changes to authorization.* If an authorization under Paragraph (2) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Paragraph (2) of this subsection must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

[~~(2)~~] (4) The signature [~~is~~] on an application, report or other information requested by the director must be directly preceded by the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

H. Transfer of Class I non-hazardous waste injection well and Class III well discharge permits.

(1) The transfer provisions of [~~Section~~] 20.6.2.3111 NMAC do not apply to a discharge permit for a Class I non-hazardous waste injection well or Class III well.

(2) A Class I non-hazardous waste injection well or Class III well discharge permit may be transferred if:

(a) the secretary receives written notice 30 days prior to the transfer date; and

(b) the secretary does not object prior to the proposed transfer date; the secretary may require modification of the discharge permit as a condition of transfer, and may require demonstration of adequate financial responsibility.

(3) The written notice required by Subparagraph [~~(b)~~] (a) of Paragraph (2) of Subsection [~~I~~] H above shall:

(a) have been signed by the discharger and the succeeding discharger, including an acknowledgement that the succeeding discharger shall be responsible for compliance with the discharge permit upon taking possession of the facility; and

(b) set a specific date for transfer of discharge permit responsibility, coverage and liability; and

(c) include information relating to the succeeding discharger's financial responsibility required by Paragraph (17) of Subsection B of [~~Section~~] 20.6.2.5210 NMAC.

I. Modification or termination of a discharge permit for a Class I [~~non-hazardous waste injection~~] well or Class III well: If data submitted pursuant to any monitoring requirements specified in the discharge permit or other information available to the secretary indicate that this part are being or may be violated, the secretary may require modification or, if it is determined by the secretary that the modification may not be adequate, may terminate a discharge permit for a Class I [~~non-hazardous waste injection~~] well, or Class III well or well field, that was approved pursuant to the requirements of this under [~~Sections~~] 20.6.2.5000 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC for the following causes:

(1) noncompliance by the discharger with any condition of the discharge permit; or

(2) the discharger's failure in the discharge permit application or during the discharge permit review process to disclose fully all relevant facts, or the discharger's misrepresentation of any relevant facts at any time; or

(3) a determination that the permitted activity may cause a hazard to public health or undue risk to property and can only be regulated to acceptable levels by discharge permit modification or termination.

[9-20-82, 12-1-95, 11-15-96; 20.6.2.5101 NMAC - Rn, 20 NMAC 6.2.V.5101, 1-15-01; A, 12-1-01; A, 9-15-02; A, 8-1-14; A, 8-31-15]

20.6.2.5102 PRE-CONSTRUCTION REQUIREMENTS FOR CLASS I [~~NON-HAZARDOUS WASTE INJECTION~~] WELLS AND CLASS III WELLS:

A. Discharge permit requirement for Class I [~~non-hazardous waste injection~~] wells.

(1) Prior to construction of a Class I [~~non-hazardous waste injection~~] well or conversion of an existing well to a Class I [~~non-hazardous waste injection~~] well, an approved discharge permit is required that incorporates the requirements of [~~Sections~~] 20.6.2.5000 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC, except Subsection C of [~~Section~~] 20.6.2.5210 NMAC. As a condition of discharge permit issuance, the operation of the Class I [~~non-hazardous waste injection~~] well under the discharge permit will not be authorized until the secretary has:

(a) reviewed the information submitted for his consideration pursuant to Subsection C of [~~Section~~] 20.6.2.5210 NMAC; and

(b) determined that the information submitted demonstrates that the operation will be in compliance with this part and the discharge permit.

(2) If conditions encountered during construction represent a substantial change which could adversely impact ground water quality from those anticipated in the discharge permit, the secretary shall require a discharge permit modification or may terminate the discharge permit pursuant to Subsection I of [~~Section~~] 20.6.2.5101 NMAC, and the secretary shall publish public notice and allow for comments and hearing in accordance with [~~Section~~] 20.6.2.3108 NMAC.

B. Notification requirement for Class III wells.

(1) The discharger shall notify the secretary in writing prior to the commencement of drilling or construction of wells which are expected to be used for in situ extraction, unless the discharger has previously received a discharge permit or project discharge permit for the Class III well operation.

(a) Any person proposing to drill or construct a new Class III well or well field, or convert an existing well to a Class III well, shall file plans, specifications and pertinent documents regarding such construction or conversion, with the ground water quality bureau of the environment department.

(b) Plans, specifications, and pertinent documents required by this section, if pertaining to geothermal installations, carbon dioxide facilities, or facilities for the exploration, production, refinement or pipeline transmission of oil and natural gas, shall be filed instead with the oil conservation division.

(c) Plans, specifications and pertinent documents required to be filed under this section must be filed 90 days prior to the planned commencement of construction or conversion.

(d) The following plans, specifications and pertinent documents shall be provided with the notification:

(i) information required in Subsection C of [~~Section~~] 20.6.2.3106 NMAC;

(ii) a map showing the Class III wells which are to be constructed; the map must also show, in so far as is known or is reasonably available from the public records, the number, name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads, that are within the expected area of review ([~~Section~~] 20.6.2.5202 NMAC) of the Class III well or well field perimeter;

(iii) maps and cross-sections indicating the general vertical and lateral limits of all ground water having 10,000 mg/l or less TDS within one mile of the site, the position of such ground water within this area relative to the injection formation, and the direction of water movement, where known, in each zone of ground water which may be affected by the proposed injection operation;

(iv) maps and cross-sections detailing the geology and geologic structure of the local area, including faults, if known or suspected;

(v) the proposed formation testing program to obtain an analysis or description, whichever the secretary requires, of the chemical, physical, and radiological characteristics of, and other information on, the receiving formation;

(vi) the proposed stimulation program;

(vii) the proposed injection procedure;

(viii) schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(ix) proposed construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program;

(x) information, as described in Paragraph (17) of Subsection B of [~~Section~~] 20.6.2.5210 NMAC, showing the ability of the discharger to undertake measures necessary to prevent groundwater contamination; and

(xi) a plugging and abandonment plan showing that the requirements of Subsections B, C and D of [~~Section~~] 20.6.2.5209 NMAC will be met.

(2) Prior to construction, the discharger shall have received written notice from the secretary that the information submitted under item 10 of Subparagraph (d) of Paragraph (1) of Subsection B of [~~Section~~] 20.6.2.5102 NMAC is acceptable. Within 30 days of submission of the above information the secretary shall notify the discharger that the information submitted is acceptable or unacceptable.

(3) Prior to construction, the secretary shall review said plans, specifications and pertinent documents and shall comment upon their adequacy of design for the intended purpose and their compliance with pertinent sections of this part. Review of plans, specifications and pertinent documents shall be based on the criteria contained in [~~Section~~] 20.6.2.5205, Subsection E of [~~Section~~] 20.6.2.5209, and Subparagraph (d) of Paragraph (1) of Subsection B of [~~Section~~] 20.6.2.5102 NMAC.

(4) Within [~~thirty (30)~~] 30 days of receipt, the secretary shall issue public notice, consistent with Subsection B of [~~Section~~] 20.6.2.3108 NMAC, that notification was submitted pursuant to Subsection B of [~~Section~~] 20.6.2.5102 NMAC. The secretary shall allow a period of at least [~~thirty (30)~~] 30 days during which comments may be submitted. The public notice shall include:

(a) name and address of the proposed discharger;

(b) location of the discharge;

(c) brief description of the proposed activities;

(d) statement of the public comment period; and

(e) address and telephone number at which interested persons may obtain further information.

(5) The secretary shall comment in writing upon the plans and specifications within [~~sixty (60)~~] 60 days of their receipt by the secretary.

(6) Within [~~thirty (30)~~] 30 days after completion, the discharger shall submit written notice to the secretary that the construction or conversion was completed in accordance with submitted plans and specifications, or shall submit as-built plans detailing changes from the originally submitted plans and specifications.

(7) In the event a discharge permit application is not submitted or approved, all wells which may cause groundwater contamination shall be plugged and abandoned by the applicant pursuant to the plugging and abandonment plan submitted in the notification; these measures shall be consistent with any comments made by the secretary in his review. If the wells are not to be permanently abandoned and

the discharger demonstrates that plugging at this time is unnecessary to prevent groundwater contamination, plugging pursuant to the notification is not required. Financial responsibility established pursuant to [~~Sections~~] 20.6.2.5000 through 20.6.2.5299 NMAC will remain in effect until the discharger permanently abandons and plugs the wells in accordance with the plugging and abandonment plan.
[9-20-82, 12-24-87, 12-1-95; 20.6.2.5102 NMAC - Rn, 20 NMAC 6.2.V.5102, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5103 DESIGNATED AQUIFERS FOR CLASS I [~~NON-HAZARDOUS WASTE INJECTION~~] WELLS AND CLASS III WELLS:

A. Any person may file a written petition with the secretary seeking commission consideration of certain aquifers or portions of aquifers as "designated aquifers". The purpose of aquifer designation is:

(1) for Class I [~~non-hazardous waste injection~~] wells, to allow as a result of injection, the addition of water contaminants into ground water, which before initiation of injection has a concentration between 5,000 and 10,000 mg/l TDS; or

(2) for Class III wells, to allow as a result of injection, the addition of water contaminants into ground water, which before initiation of injection has a concentration between 5,000 and 10,000 mg/l TDS, and not provide for restoration or complete restoration of that ground water pursuant to Paragraph (2) of Subsection C of [~~Section~~] 20.6.2.5101 NMAC.

B. The applicant shall identify (by narrative description, illustrations, maps or other means) and describe such aquifers, in geologic [~~and/or~~] and geometric terms (such as vertical and lateral limits and gradient) which are clear and definite.

C. An aquifer or portion of an aquifer may be considered for aquifer designation under Subsection A of this section, if the applicant demonstrates that the following criteria are met:

(1) it is not currently used as a domestic or agricultural water supply; and

(2) there is no reasonable relationship between the economic and social costs of failure to designate and benefits to be obtained from its use as a domestic or agricultural water supply because:

(a) it is situated at a depth or location which makes recovery of water for drinking or agricultural purposes economically or technologically impractical at present and in the reasonably foreseeable future; or

(b) it is already so contaminated that it would be economically or technologically impractical to render that water fit for human consumption or agricultural use at present and in the reasonably foreseeable future.

D. The petition shall state the extent to which injection would add water contaminants to ground water and why the proposed aquifer designation should be approved. For Class III wells, the applicant shall state whether and to what extent restoration will be carried out.

E. The secretary shall either transmit the petition to the commission within [~~sixty (60) days~~] 60 recommending that a public hearing be held, or refuse to transmit the petition and notify the applicant in writing citing reasons for such refusal.

F. If the secretary transmits the petition to the commission, the commission shall review the petition and determine to either grant or deny a public hearing on the petition. If the commission grants a public hearing, it shall issue a public notice, including the following information:

(1) name and address of the applicant;

(2) location, depth, TDS, areal extent, general description and common name or other identification of the aquifer for which designation is sought;

(3) nature of injection and extent to which the injection will add water contaminants to ground water; and

(4) address and telephone number at which interested persons may obtain further information.

G. If the secretary refuses to transmit the petition to the commission, then the applicant may appeal the secretary's disapproval of the proposed aquifer designation to the commission within [~~thirty (30)~~] 30 days, and address the issue of whether the proposed aquifer designation meets the criteria of Subsections A, B, C, and D of this section.

H. If the commission grants a public hearing, the hearing shall be held in accordance with the provisions of Section 74-6-6 NMSA 1978.

I. If the commission does not grant a public hearing on the petition, the aquifer designation shall not be approved.

J. After public hearing and consideration of all facts and circumstances included in Section 74-6-4(D) NMSA 1978, the commission may authorize the secretary to approve a proposed designated aquifer if the commission determines that the criteria of [~~Subsection~~] Subsections A, B, C, and D of this section are met.

K. Approval of a designated aquifer petition does not alleviate the applicant from complying with other sections of [~~Sections~~] 20.6.2.5000 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC, or of the responsibility for protection, pursuant to this part, of other nondesignated aquifers containing ground water having 10,000 mg/l or less TDS.

L. Persons other than the petitioner may add water contaminants as a result of injection into an aquifer designated for injection, provided the person receives a discharge permit pursuant to the requirements of [~~Sections~~] 20.6.2.5000 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC. Persons, other than the original petitioner or his designee, requesting addition of water contaminants as a result of injection into aquifers previously designated only for injection with partial restoration shall file a petition with the commission pursuant to the requirements of Subsections A, B, C, and D of this section.
[9-20-82, 12-1-95; 20.6.2.5103 NMAC - Rn, 20 NMAC 6.2.V.5103, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5104 WAIVER OF REQUIREMENT BY SECRETARY FOR CLASS I [~~NON-HAZARDOUS WASTE INJECTION~~] WELLS AND CLASS III WELLS:

A. Where a Class I [~~non-hazardous waste injection~~] well or a Class III well or well field, does not penetrate, or inject into or above, and which will not affect, ground water having 10,000 mg/l of less TDS, the secretary may:

(1) issue a discharge permit for a well or well field with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required by [~~Sections~~] 20.6.2.5000 through [~~20.6.2.5299~~] 20.6.2.5399 NMAC; or

(2) for Class III wells only, issue a discharge permit pursuant to the requirements of [~~Sections~~] 20.6.2.3000 through 20.6.2.3114 NMAC.

B. Authorization of a reduction in requirements under Subsection A of this section shall be granted only if injection will not result in an increased risk of movement of

fluids into ground water having 10,000 mg/l or less TDS, except for fluid movement approved pursuant to [~~Section~~] 20.6.2.5103 NMAC.
[9-20-82, 12-1-95; 20.6.2.5104 NMAC - Rn & A, 20 NMAC 6.2.V.5104, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5200 TECHNICAL CRITERIA AND PERFORMANCE STANDARDS FOR CLASS I [~~NON-HAZARDOUS WASTE INJECTION~~] WELLS AND CLASS III WELLS:
[12-1-95; 20.6.2.5200 NMAC - Rn, 20 NMAC 6.2.V.5200, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5201 PURPOSE:
[~~Sections~~] 20.6.2.5200 through 20.6.2.5210 NMAC provide the technical criteria and performance standards for Class I [~~non-hazardous waste injection~~] wells and Class III wells. (20.6.2.5300 through 20.6.2.5399 NMAC provide certain additional technical and performance standards for Class I hazardous waste injection wells.)
[9-20-82; 20.6.2.5201 NMAC - Rn, 20 NMAC 6.2.V.5201, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5204 MECHANICAL INTEGRITY FOR CLASS I [~~NON-HAZARDOUS WASTE INJECTION~~] WELLS AND CLASS III WELLS:

A. A Class I [~~non-hazardous waste injection~~] well or Class III well has mechanical integrity if there is no detectable leak in the casing, tubing or packer which the secretary considers to be significant at maximum operating temperature and pressure; and no detectable conduit for fluid movement out of the injection zone through the well bore or vertical channels adjacent to the well bore which the secretary considers to be significant.

B. Prior to well injection and at least once every five years or more frequently as the secretary may require for good cause during the life of the well, the discharger must demonstrate that a Class I [~~non-hazardous waste injection~~] well or Class III well has mechanical integrity. The demonstration shall be made through use of the following tests:

(1) for evaluation of leaks:

(a) monitoring of annulus pressure (after an initial pressure test with liquid or gas before operation commences); or

(b) pressure test with liquid or gas;

(2) for determination of conduits for fluid movement:

(a) the results of a temperature or noise log; or

(b) where the nature of the casing used for Class III wells precludes use of these logs, cementing records and an appropriate monitoring program as the secretary may require which will demonstrate the presence of adequate cement to prevent such movement;

(3) other appropriate tests as the secretary may require.

C. The secretary may consider the use by the discharger of equivalent alternative test methods to determine mechanical integrity. The discharger shall submit information on the proposed test and all technical data supporting its use. The secretary may approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. For Class III wells this demonstration may be made by submission of adequate monitoring data after the initial mechanical integrity tests.

D. In conducting and evaluating the tests enumerated in this section or others to be allowed by the secretary, the discharger and the secretary shall apply methods and standards generally accepted in the affected industry. When the discharger reports the results of mechanical integrity tests to the secretary, he shall include a description of the test(s), the method(s) used, and the test results. In making an evaluation, the secretary's review shall include monitoring and other test data submitted since the previous evaluation.
[9-20-82, 12-1-95; 20.6.2.5204 NMAC - Rn, 20 NMAC 6.2.V.5204, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5209 PLUGGING AND ABANDONMENT FOR CLASS I [~~NON-HAZARDOUS WASTE INJECTION~~] WELLS AND CLASS III WELLS:

A. The discharger shall submit as part of the discharge permit application, a plan for plugging and abandonment of a Class I [~~non-hazardous waste injection~~] well or a Class III well that meets the requirements of Subsection C of [~~Section~~] 20.6.2.3109, [~~and~~] Subsection C of [~~Section~~] 20.6.2.5101, [~~NMAC~~] and 20.6.2.5005 NMAC for protection of ground water. If requested, a revised or updated abandonment plan shall be submitted for approval prior to closure. The obligation to implement the plugging and abandonment plan as well as the requirements of the plan survives the termination or expiration of the permit.

B. Prior to abandonment of a well used in a Class I [~~non-hazardous waste injection~~] well or Class III well operation, the well shall be plugged in a manner which will not allow the movement of fluids through the well bore out of the injection zone or between other zones of ground water. Cement plugs shall be used unless a comparable method has been approved by the secretary for the plugging of Class III wells at that site.

C. Prior to placement of the plugs, the well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method approved by the secretary.

D. Placement of the plugs shall be accomplished by one of the following:

(1) the balance method; or

(2) the dump bailer method; or

(3) the two-plug method; or

(4) an equivalent method with the approval of the secretary.

E. The following shall be considered by the secretary in determining the adequacy of a plugging and abandonment plan:

(1) the type and number of plugs to be used;

(2) the placement of each plug, including the elevation of the top and bottom;

(3) the type, grade and quantity of cementing slurry to be used;

(4) the method of placement of the plugs;

(5) the procedure to be used to plug and abandon the well; and

(6) such other factors that may affect the adequacy of the plan.

F. The discharger shall retain all records concerning the nature and composition of injected fluids until five years after completion of any plugging and abandonment procedures.
[9-20-82, 12-1-95; 20.6.2.5209 NMAC - Rn, 20 NMAC 6.2.V.5209, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5210 INFORMATION TO BE CONSIDERED BY THE

SECRETARY FOR CLASS I [~~NON-HAZARDOUS WASTE INJECTION~~] WELLS AND CLASS III WELLS:

A. This section sets forth the information to be considered by the secretary in authorizing construction and use of a Class I [~~non-hazardous waste injection~~] well or Class III well or well field. Certain maps, cross-sections, tabulations of all wells within the area of review, and other data may be included in the discharge permit application submittal by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

B. Prior to the issuance of a discharge permit or project discharge permit allowing construction of a new Class I [~~non-hazardous waste injection~~] well, operation of an existing Class I [~~non-hazardous waste injection~~] well, or operation of a new or existing Class III well or well field, or conversion of any well to injection use, the secretary shall consider the following:

(1) information required in Subsection C of [~~Section~~] 20.6.2.3106 NMAC;

(2) a map showing the Class I [~~non-hazardous waste injection~~] well, or Class III well or well fields, for which approval is sought and the applicable area of review; within the area of review, the map must show, in so far as is known or is reasonably available from the public records, the number, name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads;

(3) a tabulation of data on all wells within the area of review which may penetrate into the proposed injection zone; such data shall include, as available, a description of each well's type, the distance and direction to the injection well or well field, construction, date drilled, location, depth, record of plugging [~~and/or~~] or completion, and any additional information the secretary may require;

(4) for wells within the area of review which penetrate the injection zone, but are not properly completed or plugged, the corrective action proposed to be taken under [~~Section~~] 20.6.2.5203 NMAC;

(5) maps and cross-sections indicating the general vertical and lateral limits of all ground water having 10,000 mg/l or less TDS within the area of review, the position of such ground water within the area of review relative to the injection formation, and the direction of water movement, where known, in each zone of ground water which may be affected by the proposed injection operation;

(6) maps and cross-sections detailing the geology and geologic structure of the local area, including faults, if known or suspected;

(7) generalized maps and cross-sections illustrating the regional geologic setting;

(8) proposed operating data, including:

(a) average and maximum daily flow rate and volume of the fluid to be injected;

(b) average and maximum injection pressure;

(c) source of injection fluids and an analysis or description, whichever the secretary requires, of their chemical, physical, radiological and biological characteristics;

(9) results of the formation testing program to obtain an analysis or description, whichever the secretary requires, of the chemical, physical, and radiological characteristics of, and other information on, the receiving formation, provided that the secretary may issue a conditional approval of a discharge permit if he finds that further formation testing is necessary for final approval;

(10) expected pressure changes, native fluid displacement, and direction of movement of the injected fluid;

(11) proposed stimulation program;

(12) proposed or actual injection procedure;

(13) schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(14) construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program;

(15) contingency plans to cope with all shut-ins or well failures so as to prevent movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to [~~Section~~] 20.6.2.5103 NMAC;

(16) plans, including maps, for meeting the monitoring requirements of [~~Section~~] 20.6.2.5207 NMAC; and

(17) the ability of the discharger to undertake measures necessary to prevent contamination of ground water having 10,000 mg/l or less TDS after the cessation of operation, including the proper closing, plugging and abandonment of a well, ground water restoration if applicable, and any post-operational monitoring as may be needed; methods by which the discharger shall demonstrate the ability to undertake these measures shall include submission of a surety bond or other adequate assurances, such as financial statements or other materials acceptable to the secretary, such as: (1) a surety bond; (2) a trust fund with a New Mexico bank in the name of the state of New Mexico, with the state as beneficiary; (3) a non-renewable letter of credit made out to the state of New Mexico; (4) liability insurance specifically covering the contingencies listed in this paragraph; or (5) a performance bond, generally in conjunction with another type of financial assurance; such bond or materials shall be approved and executed prior to discharge permit issuance and shall become effective upon commencement of construction; if an adequate bond is posted by the discharger to a federal or another state agency, and this bond covers all of the measures referred to above, the secretary shall consider this bond as satisfying the bonding requirements of [~~Sections~~] 20.6.2.5000 through 20.6.2.5299 NMAC wholly or in part, depending upon the extent to which such bond is adequate to ensure that the discharger will fully perform the measures required hereinabove.

C. Prior to the secretary's approval that allows the operation of a new or existing Class I [~~non-hazardous waste injection~~] well or Class III well or well field, the secretary shall consider the following:

(1) update of pertinent information required under Subsection B of [~~Section~~] 20.6.2.5210 NMAC;

(2) all available logging and testing program data on the well;

(3) the demonstration of mechanical integrity pursuant to [~~Section~~] 20.6.2.5204 NMAC;

(4) the anticipated maximum pressure and flow rate at which the permittee will operate;

(5) the results of the formation testing program;

(6) the physical, chemical, and biological interactions between the injected fluids and fluids in the injection zone, and minerals in both the injection zone and the confining zone; and

(7) the status of corrective action on defective wells in the area of review.

[9-20-82, 12-24-87, 12-1-95; 20.6.2.5210 NMAC - Rn, 20 NMAC 6.2.V.5210, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5300 REQUIREMENTS FOR CLASS I HAZARDOUS WASTE INJECTION WELLS:

A. Except as otherwise provided for in 20.6.2.5300 through 20.6.2.5399 NMAC, Class I hazardous waste wells are subject to the minimum permit requirements for all Class I wells in 20.6.2.5000 through 20.6.2.5299 NMAC, in addition to the requirements of 20.6.2.5300 through 20.6.2.5399 NMAC. To the extent any requirement in 20.6.2.5300 through 20.6.2.5399 NMAC conflicts with a requirement of 20.6.2.5000 through 20.6.2.5299 NMAC, Class I hazardous waste injection wells must comply with 20.6.2.5300 through 20.6.2.5399 NMAC.

B. Class I hazardous waste injection wells are only authorized for use by petroleum refineries for the waste generated by the refinery ("generator").

C. The New Mexico energy, minerals and natural resources department, oil conservation division will administer and oversee all permitting of Class I hazardous waste wells pursuant to 20.6.2.5300 through 20.6.2.5399 NMAC.

[20.6.2.5300 NMAC - N, 8-31-15]

20.6.2.5301 DEFINITIONS: As used in 20.6.2.5300 through 20.6.2.5399 NMAC:

A. "**cone of influence**" means that area around the well within which increased injection zone pressures caused by injection into the hazardous waste injection well would be sufficient to drive fluids into groundwater of the state of New Mexico;

B. "**director**" means the director of the New Mexico energy, minerals and natural resources department, oil conservation division or his/her designee;

C. "**existing well**" means a Class I hazardous waste injection well which has become a Class I hazardous waste injection well as a result of a change in the definition of the injected waste which would render the waste hazardous under 20.4.1.200 NMAC (incorporating 40 C.F.R. Section 261.3);

D. "**groundwater of the state of New Mexico**" means, consistent with 20.6.2.5001 NMAC, an aquifer that contains ground water having a TDS concentration of 10,000 mg/l or less;

E. "**injection interval**" means that part of the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced;

F. "**new well**" means any Class I hazardous waste injection well which is not an existing well;

G. "**transmissive fault or fracture**" is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

[20.6.2.5301 NMAC - N, 8-31-15]

20.6.2.5302 FEES FOR CLASS I HAZARDOUS WASTE INJECTION WELLS: For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of 20.6.2.3114 NMAC.

A. *Filing Fee.* Every facility submitting a discharge permit application for approval of a Class I hazardous waste injection well shall pay a filing fee of $100 to the water quality management fund at the time the permit application is submitted. The filing fee is nonrefundable.

B. *Permit fee.*

(1) Every facility submitting a discharge permit application for approval of a Class I hazardous waste injection well shall pay a permit fee of $30,000 to the water quality management fund. The permit fee may be paid in a single payment at the time of permit approval or in equal installments over the term of the permit. Installment payments shall be remitted yearly, with the first installment due on the date of permit approval. Subsequent installments shall be remitted yearly thereafter. The permit or permit application review of any facility shall be suspended or terminated if the facility fails to submit an installment payment by its due date.

(2) Facilities applying for permits which are subsequently withdrawn or denied shall pay one-half of the permit fee at the time of denial or withdrawal.

C. *Annual administration fee.* Every facility that receives a Class I hazardous waste injection well permit shall pay an annual administrative fee of $20,000 to the water quality management fund. The initial administrative fee shall be remitted one year after commencement of disposal operations pursuant to the permit. Subsequent administrative fees shall be remitted annually thereafter.

D. *Renewal fee.*

(1) Every facility submitting a discharge permit application for renewal of a Class I hazardous waste injection well shall pay a renewal fee of $10,000 to the water quality management fund. The renewal fee may be paid in a single payment at the time of permit renewal or in equal installments over the term of the permit. Installment payments shall be remitted yearly, with the first installment due on the date of permit renewal. Subsequent installments shall be remitted yearly thereafter. The permit or permit renewal review of any facility shall be suspended or terminated if the facility fails to submit an installment payment by its due date.

(2) The director may waive or reduce fees for discharge permit renewals which require little or no cost for investigation or issuance.

E. *Modification fees.*

(1) Every facility submitting an application for a discharge permit modification of a Class I hazardous waste injection well will be assessed a filing fee plus a modification fee of $10,000 to the water quality management fund.

(2) Every facility submitting an application for other changes to a Class I hazardous waste injection well discharge permit will be assessed a filing fee plus a minor modification fee of $1,000 to the water quality management fund.

(3) Applications for both renewal and modification shall pay a filing fee plus renewal fee.

(4) If the director requires a discharge permit change as a component of an enforcement action, the facility shall pay the applicable modification fee. If the director requires a discharge permit change outside the context of an enforcement action, the facility shall not be assessed a fee.

(5) The director may waive or reduce fees for discharge permit changes which require little or no cost for investigation or issuance.

F. *Financial assurance fees.*

(1) Facilities with approved Class I hazardous waste injection well permits shall pay the financial assurance fees specified in Table 2 of 20.6.2.3114 NMAC.

(2) Facilities relying on the corporate guarantee for financial assurance shall pay an additional fee of $5,000 to the water quality management fund.

[20.6.2.5302 NMAC - N, 8-31-15]

20.6.2.5303 CONVERSION OF EXISTING INJECTION WELLS: An

existing Class I non-hazardous waste injection well may be converted to a Class I hazardous waste injection well provided the well meets the modeling, design, compatibility, and other requirements set forth in 20.6.2.5300 through 20.6.2.5399 NMAC and the permittee receives a Class I hazardous waste permit pursuant to those sections.
[20.6.2.5303 NMAC - N, 8-31-15]

20.6.2.5304 - 20.6.2.5309: [RESERVED]

20.6.2.5310 REQUIREMENTS FOR WELLS INJECTING HAZARDOUS WASTE REQUIRED TO BE ACCOMPANIED BY A MANIFEST:

A. *Applicability*. The regulations in this section apply to all generators of hazardous waste, and to the owners or operators of all hazardous waste management facilities, using any class of well to inject hazardous wastes accompanied by a manifest. (See also Subparagraph (b) of Paragraph (3) of Subsection A of 20.6.2.5004 NMAC.)

B. *Authorization*. The owner or operator of any well that is used to inject hazardous waste required to be accompanied by a manifest or delivery document shall apply for authorization to inject as specified in 20.6.2.5102 NMAC within six months after the approval or promulgation of the state UIC program.

C. *Requirements*. In addition to complying with the applicable requirements of this part, the owner or operator of each facility meeting the requirements of Subsection B of this section, shall comply with the following.

(1) *Notification*. The owner or operator shall comply with the notification requirements of 42 U.S.C. Section 6930.

(2) *Identification number*. The owner or operator shall comply with the requirements of 20.4.1.500 NMAC (incorporating 40 CFR Section 264.11).

(3) *Manifest system*. The owner or operator shall comply with the applicable recordkeeping and reporting requirements for manifested wastes in 20.4.1.500 NMAC (incorporating 40 CFR Section 264.71).

(4) *Manifest discrepancies*. The owner or operator shall comply with 20.4.1.500 NMAC (incorporating 40 CFR Section 264.72).

(5) *Operating record*. The owner or operator shall comply with 20.4.1.500 NMAC (incorporating 40 CFR Sections 264.73(a), (b)(1), and (b)(2)).

(6) *Annual report*. The owner or operator shall comply with 20.4.1.500 NMAC (incorporating 40 CFR Section 264.75).

(7) *Unmanifested waste report*. The owner or operator shall comply with 20.4.1.500 NMAC (incorporating 40 CFR Section 264.75).

(8) *Personnel training*. The owner or operator shall comply with the applicable personnel training requirements of 20.4.1.500 NMAC (incorporating 40 CFR Section 264.16).

(9) *Certification of closure*. When abandonment is completed, the owner or operator must submit to the director certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in 20.6.2.5209 NMAC.
[20.6.2.5310 NMAC - N, 8-31-15]

20.6.2.5311 - 20.6.2.5319: [RESERVED]

20.6.2.5320 ADOPTION OF 40 CFR PART 144, SUBPART F (FINANCIAL RESPONSIBILITY: CLASS I HAZARDOUS WASTE INJECTION WELLS): Except as otherwise provided, the regulations of the United States environmental protection agency set forth in 40 CFR Part 144, Subpart F are hereby incorporated by reference.
[20.6.2.5320 NMAC - N, 8-31-15]

20.6.2.5321 MODIFICATIONS, EXCEPTIONS, AND OMISSIONS: Except as otherwise provided, the following modifications, exceptions, and omissions are made to the incorporated federal regulations.

A. The following term defined in 40 CFR Section 144.61 has the meaning set forth herein, in lieu of the meaning set forth in 40 CFR Section 144.61: "plugging and abandonment plan" means the plan for plugging and abandonment prepared in accordance with the requirements of 20.6.2.5341 NMAC.

B. The following terms not defined in 40 CFR Part 144, Subsection F have the meanings set forth herein when the terms are used in this part:

(1) "administrator," "regional administrator" and other similar variations means the director of the New Mexico energy, minerals and natural resources department, oil conservation division or his/her designee;

(2) "United States environmental protection agency" or "EPA" means New Mexico energy, minerals and natural resources department, oil conservation division or OCD, except when used in 40 CFR Section 144.70(f).

C. The following provisions of 40 CFR Part 144, Subpart F are modified in 20.6.2.5321 NMAC:

(1) cross references to 40 CFR Part 144 shall be replaced by cross references to 20.6.2.5300 through 20.6.2.5399 NMAC;

(2) the cross reference to Sections 144.28 and 144.51 in Section 144.62(a) shall be replaced by a cross reference to 20.6.2.5341 NMAC;

(3) the cross references to 40 CFR Parts 264, Subpart H and 265, Subpart H shall be modified to include cross references to 40 CFR Parts 264, Subpart H and 265, Subpart H and 20.4.1.500 and 20.4.1.600 NMAC;

(4) references to EPA identification numbers in financial assurance documents shall be replaced by references to API well numbers (US well numbers);

(5) the first sentence of 40 CFR Section 144.63(f)(1) shall be replaced with the following sentence: "An owner or operator may satisfy the requirements of this section by obtaining a guarantee from a corporate parent that meets the requirements of 40 CFR Section 144.63(f)(10), including the guarantor meeting the requirements for the owner or operator under the financial test specified in this paragraph.";

(6) trust agreements prepared in accordance with 40 CFR Section 144.70(a) must state that they will be administered, construed, and enforced according to the laws of New Mexico;

(7) surety companies issuing bonds prepared in accordance with 40 CFR Section 144, Subpart F must be registered with the New Mexico office of superintendent of insurance;

D. The following provisions of 40 CFR Part 144, Subpart F are omitted from 20.6.2.5320 NMAC:

(1) Section 144.65;

(2) Section 144.66;

(3) the third sentence in 40 CFR Section 144.63(h).
[20.6.2.5321 NMAC - N, 8-31-15]

20.6.2.5322 - 20.6.2.5340 [RESERVED]

20.6.2.5341 CONDITIONS APPLICABLE TO ALL PERMITS: The following conditions apply to all Class I hazardous permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

A. *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the New Mexico Water Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application; except that the permittee need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in a variance issued under 20.6.2.1210 NMAC.

B. *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a permit renewal pursuant to Subsection F of 20.6.2.3106 NMAC.

C. *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

E. *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

F. *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

G. *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

H. *Duty to provide information.* The permittee shall furnish to the director, within a time specified, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the director, upon request, copies of records required to be kept by this permit.

I. *Duty to provide notice.* Public notice, when required, shall be provided as set forth in 20.6.2.3108 NMAC except that the following notice shall be provided in lieu of the notice required by Paragraph (2) of Subsection B of 20.6.2.3108 NMAC: a written notice must be sent by certified mail, return receipt requested, to all surface and mineral owners of record within a ½ mile radius of the proposed well or wells.

J. *Inspection and entry.* The permittee shall allow the director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the 20.6.2.5300 through 20.6.2.5399 NMAC, any substances or parameters at any location.

K. *Monitoring and records.*

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including the following:

(a) calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application; this period may be extended by request of the director at any time; and

(b) the nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under 20.6.2.5351 through 20.6.2.5363 NMAC; the director may require the owner or operator to deliver the records to the director at the conclusion of the retention period.

(3) Records of monitoring information shall include:

(a) the date, exact place, and time of sampling or measurements;

(b) the individual(s) who performed the sampling or measurements;

(c) the date(s) analyses were performed;

(d) the individual(s) who performed the analyses;

(e) the analytical techniques or methods used; and

(f) the results of such analyses.

L. *Signatory requirement.* All applications, reports, or information submitted to the director shall be signed and certified. (See Subsection G of 20.6.2.5101 NMAC.)

M. *Reporting requirements.*

(1) *Planned changes.* The permittee shall give notice to the director as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) *Monitoring reports.* Monitoring results shall be

reported at the intervals specified elsewhere in this permit.

(4) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.

(5) *Twenty-four hour reporting.* The permittee shall report any noncompliance which may endanger health or the environment, including:

(a) any monitoring or other information which indicates that any contaminant may cause an endangerment to groundwater of the state of New Mexico; or

(b) any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between groundwater of the state of New Mexico; any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances; a written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances; the written submission shall contain a description of the noncompliance and its cause; the area affected by the noncompliance, including any groundwater of the state of New Mexico; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; the date and time the permittee became aware of the noncompliance; and steps taken or planned to reduce, remediate, eliminate, and prevent reoccurrence of the noncompliance.

(6) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under Paragraphs (3), (4), and (5) of Subsection M of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph (5) of Subsection M of this section.

(7) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

N. *Requirements prior to commencing injection.* A new injection well may not commence injection until construction is complete; and

(1) the permittee has submitted notice of completion of construction to the director; and

(2) the director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or the permittee has not received notice from the director of his or her intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in Paragraph (1) of Subsection N of this section, in which case prior inspection or review is waived and the permittee may commence injection; the director shall include in his notice a reasonable time period in which he shall inspect the well.

O. The permittee shall notify the director at such times as the permit requires before conversion or abandonment of the well.

P. The permittee shall meet the requirements of 20.6.2.5209 NMAC.

Q. *Plugging and abandonment report.* Within 60 days after plugging a well or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a report to the director. If the quarterly report is due less than 15 days before completion of plugging, then the report shall be submitted within 60 days. The report shall be certified as accurate by the person who performed the plugging operation. Such report shall consist of either:

(1) a statement that the well was plugged in accordance with the plan previously submitted to the director; or

(2) where actual plugging differed from the plan previously submitted, and updated version of the plan on the form supplied by the director, specifying the differences.

R. *Duty to establish and maintain mechanical integrity.*

(1) The permittee shall meet the requirements of 20.6.2.5204 NMAC.

(2) When the director determines that a Class I hazardous well lacks mechanical integrity pursuant to 20.6.2.5204 NMAC, the director shall give written notice of the director's determination to the owner or operator. Unless the director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the director's determination. The director may allow plugging of the well pursuant to the requirements of 20.6.2.5209 NMAC or require the permittee to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between groundwater of the state of New Mexico caused by the lack of mechanical integrity. The owner or operator may resume injection upon written notification from the director that the owner or operator has demonstrated mechanical integrity pursuant to 20.6.2.5204 and 20.6.2.5358 NMAC.

(3) The director may allow the owner or operator of a well which lacks mechanical integrity pursuant to Subsection A of 20.6.2.5204 NMAC to continue or resume injection, if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between groundwater of the state of New Mexico.

S. *Transfer of a permit.* The operator shall not transfer a permit without the director's prior written approval. A request for transfer of a permit shall identify officers, directors and owners of 25% or greater in the transferee. Unless the director otherwise orders, public notice or hearing are not required for the transfer request's approval. If the director denies the transfer request, it shall notify the operator and the proposed transferee of the denial by certified mail, return receipt requested, and either the operator or the proposed transferee may request a hearing with 10 days after receipt of the notice. Until the director approves the transfer and the required financial assurance is in place, the director shall not release the transferor's financial assurance.

[20.6.2.5341 NMAC - N, 8-31-15]

20.6.2.5342 ESTABLISHING PERMIT CONDITIONS:

A. In addition to conditions required in 20.6.2.5341 NMAC, the director shall establish conditions, as required on a case-by-case basis under Subsection H of 20.6.2.3109 NMAC, Subsection A of 20.6.2.5343 NMAC, and 20.6.2.5344 NMAC. Permits for owners or operators of hazardous waste injection wells shall also include conditions meeting the requirements of 20.6.2.5310 NMAC, Paragraphs (1) and (2) of Subsection A of this section, and 20.6.2.5351 through 20.6.2.5363 NMAC.

(1) *Financial responsibility.*

(a) The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon

the underground injection operation in a manner prescribed by the director until:

(i) the well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to Subsection P of 20.6.2.5341 NMAC, and 20.6.2.5209 NMAC, and submitted a plugging and abandonment report pursuant to Subsection Q of 20.6.2.5341 NMAC; or

(ii) the well has been converted in compliance with the requirements of Subsection O of 20.6.2.5341 NMAC; or

(iii) the transferor of a permit has received notice from the director that the transfer has been approved and that the transferee's required financial assurance is in place.

(b) The owner or operator of a well injecting hazardous waste must comply with the financial responsibility requirements of 20.6.2.5320 NMAC.

(2) *Additional conditions.* The director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into groundwater of the state of New Mexico.

B. *Applicable requirements.*

(1) In addition to conditions required in all permits the director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of this part.

(2) An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of the permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit.

(3) New or renewed permits, and to the extent allowed under 20.6.2.3109 NMAC modified or terminated permits, shall incorporate each of the applicable requirements referenced in 20.6.2.5342 NMAC.

C. *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

[20.6.2.5342 NMAC - N, 8-31-15]

20.6.2.5343 SCHEDULE OF COMPLIANCE:

A. *General.* The permit may, when appropriate, specify a schedule of compliance leading to compliance with this part.

(1) *Time for compliance.* Any schedules of compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.

(2) *Interim dates.* Except as provided in Subparagraph (b) of Paragraph (1) of Subsection B of this section, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(a) The time between interim dates shall not exceed one year.

(b) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) *Reporting.* The permit shall be written to require that if Paragraph (1) of Subsection A of this section is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

B. *Alternative schedules of compliance.* A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows.

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(a) the permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(b) the permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the director may issue or modify a permit to contain two schedules as follows:

(a) both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(b) one schedule shall lead to timely compliance with applicable requirements;

(c) the second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(d) each permit containing two schedules shall include a requirement that after the permittee has made a final decision under Subparagraph (a) of Paragraph (3) of Subsection B of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the director, such as a resolution of the board of directors of a corporation.

[20.6.2.5343 NMAC - N, 8-31-15]

20.6.2.5344 REQUIERMENTS FOR RECORDING AND REPORTING OF MONITORING RESULTS: All permits shall specify:

A. requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

B. required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring;

C. applicable reporting requirements based upon the impact of the regulated activity and as specified in

20.6.2.5359 NMAC; reporting shall be no less frequent than specified in the above regulations.
[20.6.2.5344 NMAC - N, 8-31-15]

20.6.2.5345 - 20.6.2.5350: [RESERVED]

20.6.2.5351 APPLICABILITY: 20.6.2.5351 through 20.6.2.5363 NMAC establish criteria and standards for underground injection control programs to regulate Class I hazardous waste injection wells. Unless otherwise noted, these sections supplement the requirements of 20.6.2.5000 through 20.6.2.5299 NMAC and apply instead of any inconsistent requirements for Class I non-hazardous waste injection wells.
[20.6.2.5351 NMAC - N, 8-31-15]

20.6.2.5352 MINIMUM CRITERIA FOR SITING:

A. All Class I hazardous waste injection wells shall be sited such that they inject into a formation that is beneath the lowermost formation containing within one quarter mile of the well bore groundwater of the state of New Mexico.

B. The siting of Class I hazardous waste injection wells shall be limited to areas that are geologically suitable. The director shall determine geologic suitability based upon:

(1) an analysis of the structural and stratigraphic geology, the hydrogeology, and the seismicity of the region;

(2) an analysis of the local geology and hydrogeology of the well site, including, at a minimum, detailed information regarding stratigraphy, structure and rock properties, aquifer hydrodynamics and mineral resources; and

(3) a determination that the geology of the area can be described confidently and that limits of waste fate and transport can be accurately predicted through the use of models.

C. Class I hazardous waste injection wells shall be sited such that:

(1) the injection zone has sufficient permeability, porosity, thickness and areal extent to prevent migration of fluids into groundwater of the state of New Mexico; and

(2) the confining zone:

(a) is laterally continuous and free of transecting, transmissive faults or fractures over an area sufficient to prevent the movement of fluids into groundwater of the state of New Mexico; and

(b) contains at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing vertical propagation of fractures.

D. The owner or operator shall demonstrate to the satisfaction of the director that:

(1) the confining zone is separated from the base of the lowermost groundwater of the state of New Mexico by at least one sequence of permeable and less permeable strata that will provide an added layer of protection for groundwater of the state of New Mexico in the event of fluid movement in an unlocated borehole or transmissive fault; or

(2) within the area of review, the piezometric surface of the fluid in the injection zone is less than the piezometric surface of the lowermost groundwater of the state of New Mexico, considering density effects, injection pressures and any significant pumping in the overlying groundwater of the state of New Mexico; or

(3) there is no groundwater of the state of New Mexico present.

(4) The director may approve a site which does not meet the requirements in Paragraphs (1), (2), or (3) of Subsections D of this section if the owner or operator can demonstrate to the director that because of the geology, nature of the waste, or other considerations, abandoned boreholes or other conduits would not cause endangerment of groundwater of the state of New Mexico.
[20.6.2.5352 NMAC - N, 8-31-15]

20.6.2.5353 AREA OF REVIEW: For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of 20.6.2.5202 NMAC. The area of review for Class I hazardous waste injection wells shall be a two-mile radius around the well bore. The director may specify a larger area of review based on the calculated cone of influence of the well.
[20.6.2.5353 NMAC - N, 8-31-15]

20.6.2.5354 CORRECTIVE ACTION FOR WELLS IN THE AREA OF REVIEW: For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of 20.6.2.5203 NMAC.

A. The owner or operator of a Class I hazardous waste well shall as part of the permit application submit a plan to the director outlining the protocol used to:

(1) identify all wells penetrating the confining zone or injection zone within the area of review; and

(2) determine whether wells are adequately completed or plugged.

B. The owner or operator of a Class I hazardous waste well shall identify the location of all wells within the area of review that penetrate the injection zone or the confining zone and shall submit as required in Subsection A of 20.6.2.5360 NMAC:

(1) a tabulation of all wells within the area of review that penetrate the injection zone or the confining zone; and

(2) a description of each well or type of well and any records of its plugging or completion.

C. For wells that the director determines are improperly plugged, completed, or abandoned, or for which plugging or completion information is unavailable, the applicant shall also submit a plan consisting of such steps or modification as are necessary to prevent movement of fluids into or between groundwater of the state of New Mexico. Where the plan is adequate, the director shall incorporate it into the permit as a condition. Where the director's review of an application indicates that the permittee's plan is inadequate (based at a minimum on the factors in Subsection E of this section), the director shall:

(1) require the applicant to revise the plan;

(2) prescribe a plan for corrective action as a condition of the permit; or

(3) deny the application.

D. Requirements.

(1) Existing injection wells. Any permit issued for an existing Class I hazardous waste injection well requiring corrective action other than pressure limitations shall include a compliance schedule requiring any corrective action accepted or prescribed under Subsection C of this section. Any such compliance schedule shall provide for compliance no later than two years following issuance of the permit and shall require observance of appropriate pressure limitations under Paragraph (3) of Subsection D until all other corrective action measures have been implemented.

(2) New injection wells. No owner or operator of a new Class I hazardous waste injection well may begin injection until all corrective actions required under this section have been taken.

(3) The director may require pressure limitations in lieu of plugging. If pressure limitations are used in lieu of plugging, the director shall require as a permit condition that injection pressure be so limited that pressure in the injection zone at the site of any improperly completed or abandoned well within the area of review would not be sufficient to drive fluids into or between groundwater of the state of New Mexico. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation may be made part of a compliance schedule and may be required to be maintained until all other required corrective actions have been implemented.

E. In determining the adequacy of corrective action proposed by the applicant under Subsection C of this section and in determining the additional steps needed to prevent fluid movement into and between groundwater of the state of New Mexico, the following criteria and factors shall be considered by the director:

(1) nature and volume of injected fluid;

(2) nature of native fluids or byproducts of injection;

(3) geology;

(4) hydrology;

(5) history of the injection operation;

(6) completion and plugging records;

(7) closure procedures in effect at the time the well was closed;

(8) hydraulic connections with groundwater of the state of New Mexico;

(9) reliability of the procedures used to identify abandoned wells; and

(10) any other factors which might affect the movement of fluids into or between groundwater of the state of New Mexico.

[20.6.2.5354 NMAC - N, 8-31-15]

20.6.2.5355 CONSTRUCTION REQUIREMENTS:

A. *General.* All existing and new Class I hazardous waste injection wells shall be constructed and completed to:

(1) prevent the movement of fluids into or between groundwater of the state of New Mexico or into any unauthorized zones;

(2) permit the use of appropriate testing devices and workover tools; and

(3) permit continuous monitoring of injection tubing and long string casing as required pursuant to Subsection F of 20.6.2.5357 NMAC.

B. *Compatibility.* All well materials must be compatible with fluids with which the materials may be expected to come into contact. A well shall be deemed to have compatibility as long as the materials used in the construction of the well meet or exceed standards developed for such materials by the American petroleum institute, ASTM, or comparable standards acceptable to the director.

C. *Casing and cementing of new wells.*

(1) Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post-closure care period. The casing and cementing program shall be designed to prevent the movement of fluids into or between groundwater of the state of New Mexico, and to prevent potential leaks of fluids from the well. In determining and specifying casing and cementing requirements, the director shall consider the following information as required by 20.6.2.5360 NMAC:

(a) depth to the injection zone;

(b) injection pressure, external pressure, internal pressure and axial loading;

(c) hole size;

(d) size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification and construction material);

(e) corrosiveness of injected fluid, formation fluids and temperature;

(f) lithology of injection and confining zones;

(g) type or grade of cement; and

(h) quantity and chemical composition of the injected fluid.

(2) One surface casing string shall, at a minimum, extend into the confining bed below the lowest formation that contains groundwater of the state of New Mexico and be cemented by circulating cement from the base of the casing to the surface, using a minimum of 120% of the calculated annual volume. The director may require more than 120% when the geology or other circumstances warrant it.

(3) At least one long string casing, using a sufficient number of centralizers, shall extend to the injection zone and shall be cemented by circulating cement to the surface in one or more stages:

(a) of sufficient quantity and quality to withstand the maximum operating pressure; and

(b) in a quantity no less than 120% of the calculated volume necessary to fill the annular space; the director may require more than 120% when the geology or other circumstances warrant it.

(4) Circulation of cement may be accomplished by staging. The director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement is continuous and does not allow fluid movement behind the well bore.

(5) Casings, including any casing connections, must be rated to have sufficient structural strength to withstand, for the design life of the well:

(a) the maximum burst and collapse pressures which may be experienced during the construction, operation and closure of the well; and

(b) the maximum tensile stress which may be experienced at any point along the length of the casing during the construction, operation, and closure of the well.

(6) At a minimum, cement and cement additives must be of sufficient quality and quantity to maintain integrity over the design life of the well.

D. *Tubing and packer.*

(1) All Class I hazardous waste injection wells shall inject fluids through tubing with a packer set at a point specified by the director.

(2) In determining and specifying requirements for tubing and packer, the following factors shall be considered:

(a) depth of setting;

(b) characteristics of injection fluid (chemical content, corrosiveness, temperature and density);

(c) injection pressure;

(d) annular pressure;

(e) rate (intermittent or continuous), temperature and volume of injected fluid;

(f) size of casing; and

(g) tubing tensile, burst, and collapse strengths.

(3) The director may approve the use of a fluid seal if he determines that the following conditions are met:

(a) the operator demonstrates that the seal will provide a level of protection comparable to a packer;

(b) the operator demonstrates that the staff is, and will remain, adequately trained to operate and maintain the well and to identify and interpret variations in parameters of concern;

(c) the permit contains specific limitations on variations in annular pressure and loss of annular fluid;

(d) the design and construction of the well allows continuous monitoring of the annular pressure and mass balance of annular fluid; and

(e) a secondary system is used to monitor the interface between the annulus fluid and the injection fluid and the permit contains requirements for testing the system every three months and recording the results.

[20.6.2.5355 NMAC - N, 8-31-15]

20.6.2.5356 LOGGING, SAMPLING, AND TESTING PRIOR TO NEW WELL OPERATION:

A. During the drilling and construction of a new Class I hazardous waste injection well, appropriate logs and tests shall be run to determine or verify the depth, thickness, porosity, permeability, and rock type of, and the salinity of any entrained fluids in, all relevant geologic units to assure conformance with performance standards in 20.6.2.5355 NMAC, and to establish accurate baseline data against which future measurements may be compared. A descriptive report interpreting results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the director. At a minimum, such logs and tests shall include:

(1) deviation checks during drilling on all holes constructed by drilling pilot holes which are enlarged by reaming or another method; such checks shall be at sufficiently frequent intervals to determine the location of the borehole and to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling; and

(2) such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses; at a minimum, the following logs shall be required in the following situations:

(a) upon installation of the surface casing:

(i) resistivity, spontaneous potential, and caliper logs before the casing is installed; and

(ii) a cement bond and variable density log, and a temperature log after the casing is set and cemented;

(b) upon installation of the long string casing:

(i) resistivity, spontaneous potential, porosity, caliper, gamma ray, and fracture finder logs before the casing is installed; and

(ii) a cement bond and variable density log, and a temperature log after the casing is set and cemented;

(c) the director may allow the use of an alternative to the above logs when an alternative will provide equivalent or better information; and

(3) a mechanical integrity test consisting of:

(a) a pressure test with liquid or gas;

(b) a radioactive tracer survey;

(c) a temperature or noise log;

(d) a casing inspection log, if required by the director; and

(e) any other test required by the director.

B. Whole cores or sidewall cores of the confining and injection zones and formation fluid samples from the injection zone shall be taken. The director may accept cores from nearby wells if the owner or operator can demonstrate that core retrieval is not possible and that such cores are representative of conditions at the well. The director may require the owner or operator to core other formations in the borehole.

C. The fluid temperature, pH, conductivity, pressure and the static fluid level of the injection zone must be recorded.

D. At a minimum, the following information concerning the injection and confining zones shall be determined or calculated for Class I hazardous waste injection wells:

(1) fracture pressure;

(2) other physical and chemical characteristics of the injection and confining zones; and

(3) physical and chemical characteristics of the formation fluids in the injection zone.

E. Upon completion, but prior to operation, the owner or operator shall conduct the following tests to verify hydrogeologic characteristics of the injection zone:

(1) a pump test; or

(2) injectivity tests.

F. The director shall have the opportunity to witness all logging and testing required by 20.6.2.5351 through 20.6.2.5363 NMAC. The owner or operator shall submit a schedule of such activities to the director 30 days prior to conducting the first test.

[20.6.2.5356 NMAC - N, 8-31-15]

20.6.2.5357 OPERATING REQUIREMENTS:

A. Except during stimulation, the owner or operator shall assure that injection pressure at the wellhead does not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. The owner or operator shall assure that the injection pressure does not initiate fractures or propagate existing fractures in the confining zone, nor cause the movement of injection or formation fluids into groundwater of the state of New Mexico.

B. Injection between the outermost casing protecting groundwater of the state of New Mexico and the well bore is prohibited.

C. The owner or operator shall maintain an annulus pressure that exceeds the operating injection pressure, unless the director determines that such a requirement might harm the integrity of the well. The fluid in the annulus shall be

noncorrosive, or shall contain a corrosion inhibitor.

D. The owner or operator shall maintain mechanical integrity of the injection well at all times.

E. Permit requirements for owners or operators of hazardous waste wells which inject wastes which have the potential to react with the injection formation to generate gases shall include:

(1) conditions limiting the temperature, pH or acidity of the injected waste; and

(2) procedures necessary to assure that pressure imbalances which might cause a backflow or blowout do not occur.

F. The owner or operator shall install and use continuous recording devices to monitor: the injection pressure; the flow rate, volume, and temperature of injected fluids; and the pressure on the annulus between the tubing and the long string casing, and shall install and use:

(1) automatic alarm and automatic shut-off systems, designed to sound and shut-in the well when pressures and flow rates or other parameters approved by the director exceed a range or gradient specified in the permit; or

(2) automatic alarms, designed to sound when the pressures and flow rates or other parameters approved by the director exceed a rate or gradient specified in the permit, in cases where the owner or operator certifies that a trained operator will be on-site at all times when the well is operating.

G. If an automatic alarm or shutdown is triggered, the owner or operator shall immediately investigate and identify as expeditiously as possible the cause of the alarm or shutoff. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under Subsection F of this section otherwise indicates that the well may be lacking mechanical integrity, the owner or operator shall:

(1) cease injection of waste fluids unless authorized by the director to continue or resume injection;

(2) take all necessary steps to determine the presence or absence of a leak; and

(3) notify the director within 24 hours after the alarm or shutdown.

H. If a loss of mechanical integrity is discovered pursuant to Subsection G of this section or during periodic mechanical integrity testing, the owner or operator shall:

(1) immediately cease injection of waste fluids;

(2) take all steps reasonably necessary to determine whether there may have been a release of hazardous wastes or hazardous waste constituents into any unauthorized zone;

(3) notify the director within 24 hours after loss of mechanical integrity is discovered;

(4) notify the director when injection can be expected to resume; and

(5) restore and demonstrate mechanical integrity to the satisfaction of the director prior to resuming injection of waste fluids.

I. Whenever the owner or operator obtains evidence that there may have been a release of injected wastes into an unauthorized zone:

(1) the owner or operator shall immediately case injection of waste fluids, and:

(a) notify the director within 24 hours of obtaining such evidence;

(b) take all necessary steps to identify and characterize the extent of any release;

(c) comply with any remediation plan specified by the director;

(d) implement any remediation plan approved by the director; and

(e) where such release is into groundwater of the state of New Mexico currently serving as a water supply, place a notice in a newspaper of general circulation.

(2) The director may allow the operator to resume injection prior to completing cleanup action if the owner or operator demonstrates that the injection operation will not endanger groundwater of the state of New Mexico.

J. The owner or operator shall notify the director and obtain his approval prior to conducting any well workover.

[20.6.2.5357 NMAC - N, 8-31-15]

20.6.2.5358 TESTING AND MONITORING REQUIREMENTS: Testing and monitoring requirements shall at a minimum include.

A. Monitoring of the injected wastes.

(1) The owner or operator shall develop and follow an approved written waste analysis plan that describes the procedures to be carried out to obtain a detailed chemical and physical analysis of a representative sample of the waste, including the quality assurance procedures used. At a minimum, the plan shall specify:

(a) the parameters for which the waste will be analyzed and the rationale for the selection of these parameters;

(b) the test methods that will be used to test for these parameters; and

(c) the sampling method that will be used to obtain a representative sample of the waste to be analyzed.

(2) The owner or operator shall repeat the analysis of the injected wastes as described in the waste analysis plan at frequencies specified in the waste analysis plan and when process or operating changes occur that may significantly alter the characteristics of the waste stream.

(3) The owner or operator shall conduct continuous or periodic monitoring of selected parameters as required by the director.

(4) The owner or operator shall assure that the plan remains accurate and the analyses remain representative.

B. Hydrogeologic compatibility determination. The owner or operator shall submit information demonstrating to the satisfaction of the director that the waste stream and its anticipated reaction products will not alter the permeability, thickness or other relevant characteristics of the confining or injection zones such that they would no longer meet the requirements specified in 20.6.2.5352 NMAC.

C. Compatibility of well materials.

(1) The owner or operator shall demonstrate that the waste stream will be compatible with the well materials with which the waste is expected to come into contact, and submit to the director a description of the methodology used to make that determination. Compatibility for purposes of this requirement is established if contact with injected fluids will not cause the well materials to fail to satisfy any design requirement imposed under Subsection B of 20.6.2.5355 NMAC.

(2) The director shall require continuous corrosion monitoring of the construction materials used in the well for wells injecting corrosive waste, and may require such monitoring for other waste, by:

(a) placing coupons of the well construction materials in contact with the waste stream; or

(b) routing the waste stream through a loop constructed with the material used in the well; or

(c) using an alternative method approved by the director.

(3) If a corrosion monitoring program is required:

(a) the test shall use materials identical to those used in the construction of the well, and such materials must be continuously exposed to the operating pressures and temperatures (measured at the well head) and flow rates of the injection operation; and

(b) the owner or operator shall monitor the materials for loss of mass, thickness, cracking, pitting and other signs of corrosion on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in Subsection B of 20.6.2.5355 NMAC.

D. Periodic mechanical integrity testing. In fulfilling the requirements of 20.6.2.5204 NMAC, the owner or operator of a Class I hazardous waste injection well shall conduct the mechanical integrity testing as follows:

(1) the long string casing, injection tube, and annular seal shall be tested by means of an approved pressure test with a liquid or gas annually and whenever there has been a well workover;

(2) the bottom-hole cement shall be tested by means of an approved radioactive tracer survey annually;

(3) an approved temperature, noise, or other approved log shall be run at least once every five years to test for movement of fluid along the borehole; the director may require such tests whenever the well is worked over;

(4) casing inspection logs shall be run whenever the owner or operator conducts a workover in which the injection string is pulled, unless the director waives this requirement due to well construction or other factors which limit the test's reliability, or based upon the satisfactory results of a casing inspection log run within the previous five years; the director may require that a casing inspection log be run every five years, if he has reason to believe that the integrity of the long string casing of the well may be adversely affected by naturally-occurring or man-made events;

(5) any other test approved by the director in accordance with the procedures in 40 CFR Section 146.8(d) may also be used.

E. Ambient monitoring.

(1) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone, and on the potential value of monitoring wells to detect such movement, the director shall require the owner or operator to develop a monitoring program. At a minimum, the director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(2) When prescribing a monitoring system the director may also require:

(a) continuous monitoring for pressure changes in the first aquifer overlying the confining zone; when such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the director;

(b) the use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the director, or to provide other site specific data;

(c) periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(d) periodic monitoring of the ground water quality in the lowermost groundwater of the state of New Mexico; and

(e) any additional monitoring necessary to determine whether fluids are moving into or between groundwater of the state of New Mexico.

F. The director may require seismicity monitoring when he has reason to believe that the injection activity may have the capacity to cause seismic disturbances.

[20.6.2.5358 NMAC - N, 8-31-15]

20.6.2.5359 REPORTING REQUIREMENTS: Reporting requirements shall, at a minimum, include:

A. quarterly reports to the director containing:

(1) the maximum injection pressure;

(2) a description of any event that exceeds operating parameters for annulus pressure or injection pressure as specified in the permit;

(3) a description of any event which triggers an alarm or shutdown device required pursuant to Subsection F of 20.6.2.5357 NMAC and the response taken;

(4) the total volume of fluid injected;

(5) any change in the annular fluid volume;

(6) the physical, chemical and other relevant characteristics of injected fluids; and

(7) the results of monitoring prescribed under 20.6.2.5358 NMAC;

B. reporting, within 30 days or with the next quarterly report whichever comes later, the results of:

(1) periodic tests of mechanical integrity;

(2) any other test of the injection well conducted by the permittee if required by the director; and

(3) any well workover.

[20.6.2.5359 NMAC - N, 8-31-15]

20.6.2.5360 INFORMATION TO BE EVALUATED BY THE DIRECTOR: This section sets forth the information which must be evaluated by the director in authorizing Class I hazardous waste injection wells. For a new Class I hazardous waste injection well, the owner or operator shall submit all the information listed below as part of the permit application. For an existing or converted Class I hazardous waste injection well, the owner or operator shall submit all information listed below as part of the permit application except for those items of information which are current, accurate, and available in the existing permit file. For both existing and new Class I hazardous waste injection wells, certain maps, cross-sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current and readily available to the director (for example, in the permitting agency's files) and sufficiently identifiable to be retrieved.

A. Prior to the issuance of a permit for an existing Class I hazardous waste injection well to operate or the construction or conversion of a new Class I hazardous waste injection well, the director shall review the following to assure that the requirements of

20.6.2.5000 through 20.6.2.5399 NMAC are met:

(1) information required in 20.6.2.5102 NMAC;

(2) a map showing the injection well for which a permit is sought and the applicable area of review; within the area of review, the map must show the number or name and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads; the map should also show faults, if known or suspected;

(3) a tabulation of all wells within the area of review which penetrate the proposed injection zone or confining zone; such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging or completion and any additional information the director may require;

(4) the protocol followed to identify, locate and ascertain the condition of abandoned wells within the area of review which penetrate the injection or the confining zones;

(5) maps and cross-sections indicating the general vertical and lateral limits of all groundwater of the state of New Mexico within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each groundwater of the state of New Mexico which may be affected by the proposed injection;

(6) maps and cross-sections detailing the geologic structure of the local area;

(7) maps and cross-sections illustrating the regional geologic setting;

(8) proposed operating data:

(a) average and maximum daily rate and volume of the fluid to be injected; and

(b) average and maximum injection pressure;

(9) proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the injection formation and the confining zone;

(10) proposed stimulation program;

(11) proposed injection procedure;

(12) schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(13) contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any groundwater of the state of New Mexico;

(14) plans (including maps) for meeting monitoring requirements of 20.6.2.5358 NMAC;

(15) for wells within the area of review which penetrate the injection zone or the confining zone but are not properly completed or plugged, the corrective action to be taken under 20.6.2.5354 NMAC;

(16) construction procedures including a cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing and coring program; and

(17) a demonstration pursuant to 20.6.2.5320 NMAC, that the applicant has the resources necessary to close, plug or abandon the well and for post-closure care.

B. Prior to the director's granting approval for the operation of a Class I hazardous waste injection well, the owner or operator shall submit and the director shall review the following information, which shall be included in the completion report:

(1) all available logging and testing program data on the well;

(2) a demonstration of mechanical integrity pursuant to 20.6.2.5358 NMAC;

(3) the anticipated maximum pressure and flow rate at which the permittee will operate;

(4) the results of the injection zone and confining zone testing program as required in Paragraph (9) of Subsection A of 20.6.2.5360 NMAC;

(5) the actual injection procedure;

(6) the compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone and with the materials used to construct the well;

(7) the calculated area of review based on data obtained during logging and testing of the well and the formation, and where necessary revisions to the information submitted under Paragraphs (2) and (3) of Subsection A of 20.6.2.5360 NMAC;

(8) the status of corrective action on wells identified in Paragraph (15) of Subsection A of 20.6.2.5360 NMAC; and

(9) evidence that the permittee has obtained an exemption under 40 C.F.R. Part 148, Subpart C for the hazardous wastes permitted for disposal through underground injection.

C. Prior to granting approval for the plugging and abandonment (*i.e.*, closure) of a Class I hazardous waste injection well, the director shall review the information required in Paragraph (4) of Subsection A of 20.6.2.5361 NMAC and Subsection A of 20.6.2.5362 NMAC.

D. Any permit issued for a Class I hazardous waste injection well for disposal on the premises where the waste is generated shall contain a certification by the owner or operator that:

(1) the generator of the hazardous waste has a program to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) injection of the waste is that practicable method of disposal currently available to the generator which minimizes the present and future threat to human health and the environment.

[20.6.2.5360 NMAC - N, 8-31-15]

20.6.2.5361 CLOSURE:

A. *Closure plan.* The owner or operator of a Class I hazardous waste injection well shall prepare, maintain, and comply with a plan for closure of the well that meets the requirements of Subsection D of this section and is acceptable to the director. The obligation to implement the closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the method of closure reflected in the plan for approval by the director no later than the date on which notice of closure is required to be submitted to the director under Subsection B of this section.

(3) The plan

shall assure financial responsibility as required in Paragraph (1) of Subsection A of 20.6.2.5342 NMAC.

(4) The plan shall include the following information:

(a) the type and number of plugs to be used;

(b) the placement of each plug including the elevation of the top and bottom of each plug;

(c) the type and grade and quantity of material to be used in plugging;

(d) the method of placement of the plugs;

(e) any proposed test or measure to be made;

(f) the amount, size, and location (by depth) of casing and any other materials to be left in the well;

(g) the method and location where casing is to be parted, if applicable;

(h) the procedure to be used to meet the requirements of Paragraph (5) of Subsection D of this section;

(i) the estimated cost of closure; and

(j) any proposed test or measure to be made.

(5) The director may modify a closure plan following the procedures of 20.6.2.3109 NMAC.

(6) An owner or operator of a Class I hazardous waste injection well who ceases injection temporarily, may keep the well open provided he:

(a) has received authorization from the director; and

(b) has described actions or procedures, satisfactory to the director, that the owner or operator will take to ensure that the well will not endanger groundwater of the state of New Mexico during the period of temporary disuse; these actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the director.

(7) The owner or operator of a well that has ceased operations for more than two years shall notify the director 30 days prior to resuming operation of the well.

B. *Notice of intent to close.* The owner or operator shall notify the director at least 60 days before closure of a well. At the discretion of the director, a shorter notice period may be allowed.

C. *Closure report.* Within 60 days after closure or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a closure report to the director. If the quarterly report is due less than 15 days after completion of closure, then the report shall be submitted within 60 days after closure. The report shall be certified as accurate by the owner or operator and by the person who performed the closure operation (if other than the owner or operator). Such report shall consist of either:

(1) a statement that the well was closed in accordance with the closure plan previously submitted and approved by the director; or

(2) where actual closure differed from the plan previously submitted, a written statement specifying the differences between the previous plan and the actual closure.

D. *Standards for well closure.*

(1) Prior to closing the well, the owner or operator shall observe and record the pressure decay for a time specified by the director. The director shall analyze the pressure decay and the transient pressure observations conducted pursuant to Paragraph (1) of Subsection E of 20.6.2.5358 NMAC and determine whether the injection activity has conformed with predicted values.

(2) Prior to well closure, appropriate mechanical integrity testing shall be conducted to ensure the integrity of that portion of the long string casing and cement that will be left in the ground after closure. Testing methods may include:

(a) pressure tests with liquid or gas;

(b) radioactive tracer surveys;

(c) noise, temperature, pipe evaluation, or cement bond logs; and

(d) any other test required by the director.

(3) Prior to well closure, the well shall be flushed with a buffer fluid.

(4) Upon closure, a Class I hazardous waste well shall be plugged with cement in a manner that will not allow the movement of fluids into or between groundwater of the state of New Mexico.

(5) Placement of the cement plugs shall be accomplished by one of the following:

(a) the balance method;

(b) the dump bailer method;

(c) the two-plug method; or

(d) an alternate method, approved by the director, that will reliably provide a comparable level of protection.

(6) Each plug used shall be appropriately tagged and tested for seal and stability before closure is completed.

(7) The well to be closed shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the director, prior to the placement of the cement plug(s).

[20.6.2.5361 NMAC - N, 8-31-15]

20.6.2.5362 POST-CLOSURE CARE:

A. The owner or operator of a Class I hazardous waste well shall prepare, maintain, and comply with a plan for post-closure care that meets the requirements of Subsection B of this section and is acceptable to the director. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the plan as appropriate over the life of the well, but no later than the date of the closure report required under Subsection C of 20.6.2.5361 NMAC.

(3) The plan shall assure financial responsibility as required in 20.6.2.5363 NMAC.

(4) The plan shall include the following information:

(a) the pressure in the injection zone before injection began;

(b) the anticipated pressure in the injection zone at the time of closure;

(c) the predicted time until pressure in the injection zone decays to the point that

the well's cone of influence no longer intersects the base of the lowermost groundwater of the state of New Mexico;

(d) predicted position of the waste front at closure;

(e) the status of any cleanups required under 20.6.2.5354 NMAC; and

(f) the estimated cost of proposed post-closure care.

(5) At the request of the owner or operator, or on his own initiative, the director may modify the post-closure plan after submission of the closure report following the procedures in 20.6.2.3109 NMAC.

B. The owner or operator shall:

(1) continue and complete any cleanup action required under 20.6.2.5354 NMAC, if applicable;

(2) continue to conduct any groundwater monitoring required under the permit until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost groundwater of the state of New Mexico; the director may extend the period of post-closure monitoring if he determines that the well may endanger groundwater of the state of New Mexico;

(3) submit a survey plat to the local zoning authority designated by the director; the plat shall indicate the location of the well relative to permanently surveyed benchmarks; a copy of the plat shall be submitted to the director;

(4) provide appropriate notification and information to such state and local authorities as have cognizance over drilling activities to enable such state and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the well's confining or injection zone;

(5) retain, for a period of three years following well closure, records reflecting the nature, composition and volume of all injected fluids; the director shall require the owner or operator to deliver the records to the director at the conclusion of the retention period, and the records shall thereafter be retained at a location designated by the director for that purpose.

C. Each owner of a Class I hazardous waste injection well, and the owner of the surface or subsurface property on or in which a Class I hazardous waste injection well is located, must record a notation on the deed to the facility property or on some other instrument which is normally examined during title search that will in perpetuity provide any potential purchaser of the property the following information:

(1) the fact that land has been used to manage hazardous waste;

(2) the name of the state agency or local authority with which the plat was filed, as well as the address of the director;

(3) the type and volume of waste injected, the injection interval or intervals into which it was injected, and the period over which injection occurred.

[20.6.2.5362 NMAC - N, 8-31-15]

20.6.2.5363 FINANCIAL RESPONSIBILITY FOR POST-CLOSURE CARE: The owner or operator shall demonstrate and maintain financial responsibility for post-closure by using a trust fund, surety bond, letter of credit, financial test, insurance or corporate guarantee that meets the specifications for the mechanisms and instruments revised as appropriate to cover closure and post-closure care in 20.6.2.5320 NMAC. The amount of the funds available shall be no less than the amount identified in Subparagraph (f) of Paragraph (4) of Subsection A of 20.6.2.5362 NMAC. The obligation to maintain financial responsibility for post-closure care survives the termination of a permit or the cessation of injection. The requirement to maintain financial responsibility is enforceable regardless of whether the requirement is a condition of the permit.

[20.6.2.5363 NMAC - N, 8-31-15]

20.6.2.5364 - 20.6.2.5399: [RESERVED]

End of Adopted Rules Section

New Mexico Register
Submittal Deadlines and Publication Dates
Volume XXVI, Issues 1-24
2015

Volume XXVI	Submittal Deadline	Publication Date
Issue 1	January 2	January 15
Issue 2	January 16	January 30
Issue 3	February 2	February 13
Issue 4	February 16	February 27
Issue 5	March 2	March 16
Issue 6	March 17	March 31
Issue 7	April 1	April 16
Issue 8	April 17	April 30
Issue 9	May 1	May 14
Issue 10	May 15	May 29
Issue 11	June 1	June 16
Issue 12	June 17	June 30
Issue 13	July 1	July 15
Issue 14	July 16	July 30
Issue 15	July 31	August 14
Issue 16	August 17	August 28
Issue 17	August 31	September 15
Issue 18	September 16	September 29
Issue 19	September 30	October 15
Issue 20	October 16	October 29
Issue 21	October 30	November 16
Issue 22	November 17	November 30
Issue 23	December 1	December 15
Issue 24	December 16	December 30

The ***New Mexico Register*** is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the ***New Mexico Register*** twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at **http://www.nmcpr.state.nm.us/nmregister.**
For further information, call 505-476-7942