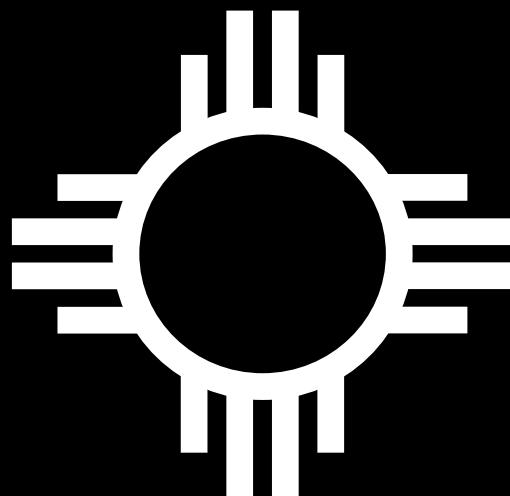


**NEW
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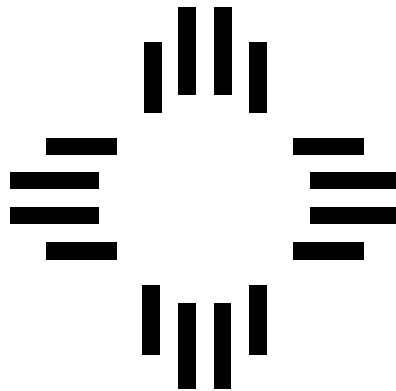


Volume XV
Issue Number 7
April 15, 2004

New Mexico Register

Volume XV, Issue Number 7

April 15, 2004



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

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2004

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New Mexico Register

Volume XV, Number 7

April 15, 2004

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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 by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING

On May 12, 2004, at 5:15 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Board) will hold a combined public hearing in the Council/Commission Chambers on the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

* Proposal to amend 20.11.7 NMAC, Variance Procedure (Part 7), and to incorporate the complete and amended 20.11.7 NMAC into the New Mexico State Implementation Plan for air quality (SIP), as described below.

The purpose of the Part 7 combined hearing is to receive testimony on proposed changes to 20.11.7 NMAC, Variance Procedure, and also to receive testimony on placing amended Part 7 into the SIP. The Part 7 proposed regulation changes include:

* Modified "Scope" and "Objective" sections that specify the statute, regulations and permits from which a variance may be requested and specify certain federal requirements from which a variance cannot be granted.

* New definitions for "division", "ex parte contact" and "prima facie case".

* An amended definition of "petitioner".

* An amended process for seeking a variance petition that establishes detailed timelines, technical requirements for a variance petition, a written recommendation by the Environmental Health Department Director, the burden of proof requirements and notification requirements, and includes notifications to neighborhood associations and the general public.

* Incorporation of the variance requirements imposed by the New Mexico Air Quality Control Act.

* The process for a separate evidentiary phase hearing before a hearing officer for the Board which does not require the Board to be present, followed by a decision of a quorum of Board.

* Requirements regarding presenta-

tion of technical evidence.

* A modified "Stay of Enforcement" section that specifies when the Board can grant a stay and also establishes timelines for deciding whether to grant a stay.

Following the combined hearing, the Board will hold its regular monthly meeting during which the Board is expected to consider adopting the proposed revisions to 20.11.7 NMAC, Variance Procedure, and incorporating the complete and amended Part 7 into the SIP.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is asked to submit a written notice of intent before 5:00 pm on Wednesday May 5, 2004 to: Attn: March Hearing Record, Mr. Dan Warren, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The notice of intent shall identify the name, address, and affiliation of the person.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on May 5, 2004. The comments shall include the name, address and affiliation of the individual or organization submitting the statement. Written comments may also be submitted electronically to dwarren@cabq.gov and shall include the required name, address and affiliation information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office,

or by contacting Mr. Neal Butt electronically at or by phone (505) 768-2660.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

PUBLIC NOTICE

The Children, Youth and Families Department, Family Services, Child Care Services Bureau, will hold a public hearing to receive comments on proposed changes to the Child Care Assistance Regulations, 8.15.2 NMAC. The public hearing will be held in Santa Fe on May 26, 2004 at 10:00 a.m. in Apodoca Hall, on the 2nd floor of the P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

Interested persons should call 1-800-832-1321 to obtain a copy of proposed revisions to the Child Care Assistance Regulations. If you cannot attend the hearing, we encourage you to get a copy of the draft document and submit your written comments to be received no later than May 26, 2004. Written comments will be given the same consideration as oral testimony made at the Public Hearing. Written comments may be sent to the Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502, or faxed to (505) 827-7361.

If you are a person with a disability and you require this information in an alternative format or require special accommodation to participate in the public hearing, please contact the Department toll free at 1-800-610-7610 extension 7499 or (505) 827-7499. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.27.4 NMAC "Emergency Medical Services Fund Act Program". The Hearing will be held at 9:00 a.m. on May 18, 2004, at the Injury Prevention and EMS Bureau, 2500 Cerrillos Road, Santa Fe, New Mexico in the EMS Operations conference room.

The public hearing will be conducted in order to repeal and replace the Department of Health's regulation 7.27.4 NMAC "Emergency Medical Services Fund Act Program". The proposed regulation will comply with legislative changes.

A draft of the proposed regulation can be obtained from:

Darlene A. Maestas
Injury Prevention & EMS Bureau
2500 Cerrillos Road
Santa Fe, New Mexico 87505
(505) 476-7886 (505) 476-7810 Fax
www.ipems.com

Please submit any written comments regarding the proposed action to the attention of Darlene A. Maestas at the above address.

If you are an individual with a disability who is in need of a special assistance or accommodations to attend or participate in the hearing, please contact Darlene A. Maestas at the above telephone number. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold 4 separate public hearings on May 13, 2004, in Mabry Hall, State Education Building (corner of West DeVargas and Don Gaspar), Santa Fe, New Mexico.

From 8:00 a.m. to 10:00 a.m. the subject of the hearing will be Transportation Services. The Human Services Department has evaluated the rate structure for Transportation Services. The proposed changes to this policy were made as a result of this evaluation. Medicaid will continue

to transport recipients to Medicaid-enrolled providers for Medicaid-covered medical services, except for transportation to pharmacies to pick up medications.

Clarification was made regarding reimbursement for transporting medical attendants. Clarification was also made regarding transportation to Medicaid Waiver facilities.

Transportation of family members for therapy sessions is a benefit of Medicaid.

From 10:00 a.m. to 12:00 p.m. the subject of the hearing will be Six-Month Certification Period. Federal regulations at 42 CFR 435.916 require re-certification of Medicaid recipients for Medicaid eligibility at least every twelve (12) months. States have the option and New Mexico is proposing re-certification of Medicaid recipients for Medicaid every six (6) months. In addition, the Medical Assistance Division is proposing the deletion of the automatic continuation of Medicaid eligibility up to twelve months for families regardless of changes in income. The 12-month continuous regulation may be found at 8.200.400.14 NMAC and 8.202.600.11 NMAC. We are proposing to delete these regulations.

Eligibility groups that will be affected by the change from a 12-month certification period to a 6-month certification period are the JUL Medicaid category (072) and Children's Medicaid (032). No other categories of Medicaid coverage will be affected.

From 1:30 p.m. to 2:30 p.m. the subject of the hearing will be Medicaid Managed Care. The proposed regulation is to amend the Medicaid managed care regulations to incorporate changes in federal law and make program changes for purposes of more effective program management. The program changes require amending several sections of the Managed Care policies.

From 2:30 p.m. to 4:30 p.m. the subject of the hearing will be Pharmacy Services. The New Mexico Medical Assistance Division is recommending changes to ensure improved management and functioning of the Medicaid pharmacy benefit. The Medical Assistance Division is revising and enhancing regulations that govern pharmacy services in the following areas: (1) clarifying the reimbursement methodology; (2) adding language to allow a 90-day supply for maintenance drugs; (3) adding language to allow mail service; (4) including DUR activities; and (5) and clarifying regulatory language.

Interested persons may submit written comments no later than 5:00 p.m., May 13, 2004, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.state.nm.us/hsd/register. or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold 5 separate public hearings on May 14, 2004, in Mabry Hall, State Education Building (corner of West DeVargas and Don Gaspar), Santa Fe, New Mexico.

From 8:30 a.m. to 9:30 a.m. the subject of the hearing will be Durable Medical Equipment & Medical Supplies Services.

The Human Services Department has evaluated the rate structure for Durable Medical Equipment and Medical Supplies. As a result of this evaluation, the following changes are proposed:

Recipients will be limited to ordering either sterile or non-sterile gloves. Sterile gloves will be limited to 100 gloves per month; non-sterile gloves will be limited to 200 gloves per month.

The rental of stationary liquid oxygen units can also be considered as a cost-effective means of providing oxygen in nursing facilities. The same rental limitations that are applied to concentrators will be applied to stationary liquid oxygen unit rentals.

Underpads will no longer be covered.

The age range of recipients eligible for disposable diaper services has been included.

Support stockings have been limited to custom-fitted compression stockings.

The list of non-covered services has been deleted because it is included in Section MAD-602, *General Non-Covered Services*.

Clarification has been made regarding home infusion dispensing fees.

From 9:30 a.m. to 10:30 a.m. the subject of the hearing will be Hearing Aids & Related Evaluations. The Human Services Department has evaluated the rate structure for Hearing Aids and Related Evaluations. The proposed changes to this policy were made as a result of this evaluation. It is proposed that reimbursement for hearing aids will be made at the lesser of the provider's billed charge; at the cost to the billing provider as indicated by the manufacturer's, distributor's or wholesaler's invoice; or up to a maximum of Medicaid's reimbursement limitations. All Medicaid providers will determine the most appropriate type and model of hearing aid to meet the recipients' needs within this price range. A Medicaid recipient who chooses a hearing aid type or model that exceeds the reimbursement amount will be responsible for the purchase.

From 10:30 a.m. to 11:30 a.m. the subject of the hearing will be Vision Services. The Human Services Department has evaluated the rate structure for Vision Services. As a result of this evaluation, the Medicaid program has changed adult benefits to include one routine eye exam, one set of corrective lenses (including contact lenses), and one frame for an adult in a twenty-four (24)-month period.

From 1:30 p.m. to 2:00 p.m. the subject of the hearing will be Prosthetic & Orthotics Services. The Human Services Department has evaluated the rate structure for Prosthetics and Orthotics. As a result of this evaluation, limitations in the coverage of compression stockings and orthopedic shoes for adults are proposed.

Eye prosthesis and prosthetic services have been relocated to this section from the Vision Services section.

Conditions and limitations of coverage have been removed from this section because they are delineated in other sections of the Medicaid Manual.

From 2:00 p.m. to 4:00 p.m. the subject of the hearing will be Personal Care

Option (PCO) Program. The Medical Assistance Division (MAD) is proposing amendments to the Personal Care Option (PCO) program regulations issued on September 1, 1999. The PCO program is a valuable program that has served the needs of many people who need care and want to stay in the comfort of their own homes and maintain their independence. The Human Services Department/MAD is proposing program changes to provide additional oversight of PCO agencies and attendants to ensure that services to consumers are adequate and effective.

The Service Standards issued on March 15, 2002 have been incorporated into the proposed regulations and are replacing them. The proposed regulations also include quality assurance provisions and impose additional requirements for personal care agencies, attendants and consumers.

Interested persons may submit written comments no later than 5:00 p.m., May 14, 2004, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.state.nm.us/hsd/register. or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold 3 separate public hearings on May 17, 2004, at the State Personnel Building, Classroom 102, at 2600 Cerrillos Road, Santa Fe, New Mexico.

From 1:30 p.m. to 2:30 p.m. the subject of the hearing will be Dental Services. The proposed regulation has been changed to eliminate placement of dental sealants for permanent premolar teeth for Medicaid-eligible children. Permanent premolars have a low susceptibility of developing tooth decay. The placement of dental sealants has minimal effect on preventing tooth decay for permanent premolar teeth.

From 2:30 p.m. to 3:30 p.m. the subject of the hearing will be Podiatry Services. The proposed regulation has been changed to reflect clarification of medically necessary podiatric services furnished by providers for the diagnosis and treatment of conditions of the foot. Recipients with a systemic condition that has resulted in severe circulatory insufficiency of areas of desensitization in the foot may receive management of podiatric services no more often than once every six (6) months if a foot care specialist has not seen the recipient for any other reason during this period. Such conditions include, but are not limited to, diabetes mellitus, arteriosclerosis, peripheral neuropathy and chronic thrombophlebitis.

From 3:30 p.m. to 4:30 p.m. the subject of the hearing will be Changes to Hospital Cost Settlements & GME Payments. The NM Human Services Department, Medical Assistance Division currently settles cost reports based on the actual allowable amount of Medicaid excludable costs incurred by a hospital during the hospital's fiscal year. The Department also pays a quarterly Graduate Medical Education (GME) payment to qualifying hospitals. This register proposes that the settlement be based upon a percentage of the actual allowable amount of Medicaid excludable costs incurred by the hospital as determined by the Department and also proposes that, at the Department's discretion, the GME payments may be reduced by a percentage amount.

Interested persons may submit written comments no later than 5:00 p.m., May 17, 2004, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-

800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.state.nm.us/hsd/register or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO MEDICAL BOARD

NEW MEXICO MEDICAL BOARD

Notice

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, May 20, 2004 at 8:00 a.m. and Friday, May 21, 2004 at 8:00 a.m. in the Conference Room, 2nd Floor, Lamy Building, 491 Old Santa Fe Trail, Santa Fe, New Mexico. A Public Rule Hearing will be held on Friday, May 21, 2004 at 1:30 p.m. in Room 311, 3rd Floor, New Mexico State Capital Building, Santa Fe, New Mexico. The Board will reconvene afterwards in the Board Conference Room, 2nd Floor of the Lamy Building where action will be taken on the proposed rules. During the Board meeting, they may enter into Executive Session to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.9 NMAC (Fees), 16.10.10 NMAC (Report of Settlements, Judgments, Adverse Actions...), and 16.10.15 NMAC (Physician Assistant Licensure). These changes will provide a time frame for licensees to report adverse actions to the Board and change the P.A. renewal cycle to more closely align with NCCPA re-certification. Changes to the fees will prorate the P.A. renewal fee while all licensees are transferred to the new cycle. In addition the Board will take public comment concerning proposed rules on the implementation of Psychologist Prescriptive authority.

A final agenda for the board meeting will be available at the board office on May 19, 2004. Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m., May 14, 2004, to the board office, 491 Old Santa Fe Trail, 2nd Floor, Lamy Building, Santa Fe, NM, 87501. Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 827-5022, or on the Internet at

www.nmmb@state.nm.us.

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 in order to attend or participate in the hearing or meeting, please contact the Executive Director at 491 Old Santa Fe Trail, Santa Fe, NM prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Executive Director if a summary or other type of accessible format is needed.

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Friday June 4, 2004. The meeting will be held during the Board's regular business meeting beginning at 9:00 a.m., located at the Leo Griego Auditorium in the Willie Ortiz Building (State Personnel Office) at 2600 Cerrillos Road, Santa Fe, New Mexico, 87503.

The purpose of the Rule Hearing is to consider amending complaints; just cause; and performance appraisal.

A final agenda for the board meeting will be available at the board office on Tuesday May 25, 2004. Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m. Monday, May 17, 2004 to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87503, attention, Sandra Perez.

Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.state.nm.us/spo/ beginning April 15, 2004.

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 in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

NEW MEXICO COMMISSIONER OF PUBLIC LANDS

NOTICE OF RULE MAKING

NOTICE IS HEREBY GIVEN that Patrick H. Lyons, New Mexico Commissioner of Public Lands (Commissioner), and the New Mexico State Land Office (NMSLO) propose to repeal 19.2.21 NMAC "Land Exchanges" in its entirety and replace it with 19.2.21 NMAC "Land Exchanges", which incorporates various changes, amendments, additions to and deletions from the previous rule.

The proposed new rule provides new and/or amended guidelines and requirements for the exchange of lands held in trust by the commissioner under the terms of the Enabling Act and subsequent legislation, except land exchanges with the United States Department of the Interior.

The Commissioner will take written comments on the proposed rule from any interested person. Interested persons shall file their written comments no later than May 15, 2004. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include specific language proposed to effectuate the changes being suggested. Specific proposed language changes to the proposed new rule should be in the same format that the proposed rule is in. A copy of the proposed rule in electronic format may be obtained from the Commissioner to facilitate this requirement. Any proposed changes to the proposed rule shall be submitted either in hard copy or by e-mail. The Commissioner strongly encourages all persons submitting comments in hard copy to file an additional copy in electronic format (3.5-inch floppy disk in Microsoft Word 95 or Microsoft Office 97 format). The label on the floppy disk shall clearly designate the name of the person submitting the proposed changes.

Please submit any written comments regarding the proposed rule to the attention of Barbara Medrano at the address set forth below and/or by e-mail to Barbara Medrano at bmedrano@slo.state.nm.us. Comments received by e-mail will be printed by the NMSLO and entered in the rule-making record.

The Commissioner will review and take into consideration all timely submitted written comments.

A copy of the proposed rule may be

obtained from:
Barbara Medrano
Office of the General Counsel
New Mexico State Land Office
PO Box 1148
Santa Fe, NM 87504-1148
Tel: 505/827-5713
Fax: 505/827-4262

Copies of the proposed rule may also be viewed at, or downloaded from the NMSLO website (www.nmstatelands.org). Upon request the documents may be made available in alternative formats.

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

**STATE OF NEW MEXICO
REGULATION AND LICENSING
DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION
NOTICE OF PUBLIC HEARING**

Public Meetings to receive comments regarding the amendments to the following rules: 2003 New Mexico Commercial Building Code; 2003 New Mexico Residential Building Code; 2003 New Mexico Plumbing Code; 2003 New Mexico Mechanical Code; 2002 New Mexico Electrical Code; 2002 New Mexico Electrical Safety Code; 2003 New Mexico Energy Conservation Code; 2003 New Mexico Existing Building Code; 2003 New Mexico Earthen Building Materials Code; 2003 New Mexico Non-load Bearing Baled Straw Construction Building Standards; 2003 New Mexico Solar Energy Code; 2003 New Mexico Swimming Pool, Spa and Hot Tub Code; 2002 NFPA 54; Continuing Education Rules for Electrical Journeyman Certificate of Competence renewals (14.5.6.12(F)). In general, these amendments will address the adoption of new construction codes, will reorganize the affected rules and will make technical corrections respecting grammar, formatting and internal consistency.

* **Santa Fe, NM** - May 17, 2004,
9:00 a.m. - 12:00 Noon
CID Conference Room,

* **Albuquerque, NM** - May 18,
2004, 9:00 a.m. - 12:00 Noon
Bradbury and Stamm
Construction Company Conference Room,
3701 Paseo del Norte

* **Las Cruces, NM** - May 17, 2004,

9:00 a.m. - 12:00 Noon
CID Conference Room, 505 S.
Main, Suite 150

* **Farmington, NM** - May 18,
2004, 9:00 a.m. - 12:00 Noon
Civic Center, 200 W. Arrington

* **Roswell, NM** - May 17, 2004,
9:00 a.m. - 12:00 Noon
City Council Chambers, 425
North Richardson

You are invited to attend and express your opinion on the adoption of the above referenced draft regulations. If you cannot attend the meeting, you may send your written comments to the General Construction Bureau, Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 476-4700. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., May 17, 2004.

Copies of the draft rules will be available at the Construction Industries Division Offices beginning May 10, 2004.

If you require special accommodations, please notify the Division of such needs no later than April 15, 2004.

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

**NEW MEXICO TAXATION AND
REVENUE DEPARTMENT**

**NOTICE OF HEARING AND
PROPOSED RULES**

The Department proposes to adopt the following regulations:

3.1.2.10 NMAC Section 9-11-12.1
NMSA 1978 Taxation and Revenue
Department Act

(Cooperative Agreement Effective Date)

3.12.12.8 and 9 NMAC Section 7-
15A-13 NMSA 1978 **W e i g h t**
Distance Tax Act

*(Weight Distance Tax Identification
Permit to Be Issued; Weight Distance Tax
Identification Permit - Administrative Fee)*

The Department also proposes to repeal 3.12.10.8 NMAC *(Annual Tax Identification Card to be Issued)* to Section 7-15A-10 NMSA 1978, 3.12.10.9 NMAC *(Lease Operators)* to Section 7-15A-10 NMSA 1978 and 3.12.11.8 NMAC *(Fee Schedule Applies to Largest Size or Fleet)* to Section 7-15A-11 NMSA 1978 of the

Weight Distance Tax Act.

The proposals were placed on file in the Office of the Secretary on March 29, 2004. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about June 15, 2004.

A public hearing will be held on the proposals on Wednesday, May 19, 2004, at 9:30 a.m. in the Secretary's Conference Room No. 3004/3138 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before May 19, 2004.

3.1.2.10 COOPERATIVE AGREEMENT EFFECTIVE DATE: A cooperative agreement or an amended cooperative agreement entered into pursuant to Section 9-11-12.1 NMSA 1978 or Section 9-11-12.2 NMSA 1978, shall become effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the cooperative agreement or amended cooperative agreement is signed by both the pueblo or tribe and the secretary.

**TITLE 3: TAXATION
CHAPTER 12: HIGHWAY USE
TAXES AND FEES
PART 12: WEIGHT DIS-
TANCE TAX IDENTIFICATION PER-
MIT**

3.12.12.1 **ISSUING AGENCY:**
Taxation and Revenue Department, Joseph
M. Montoya Building, 1100 South St.
Francis Drive, P.O. Box 630, Santa Fe NM
87504-0630
[3.12.12.1 NMAC - N, XXX]

3.12.12.2 **SCOPE:** This part
applies to all registrants, owners and opera-
tors of motor vehicles with a declared gross
weight of 26,001 pounds or more if the
motor vehicles are used or intended to be
used on New Mexico highways, when the
motor vehicle is registered with New
Mexico.
[3.12.12.2 NMAC - N, XXX]

3.12.12.3 **S T A T U T O R Y**

AUTHORITY: Section 9-11-6.2 NMSA 1978.

[3.12.12.3 NMAC - N, XXX]

3.12.12.4 **DURATION:**

Permanent.

[3.12.12.4 NMAC - N, XXX]

3.12.12.5 **EFFECTIVE DATE:**

7/1/04, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.12.12.5 NMAC - N, XXX]

3.12.12.6 **OBJECTIVE:** The

objective of this part is to interpret, exemptify, implement and enforce the provisions of the Weight Distance Tax Act.

[3.12.12.6 NMAC - N, XXX]

3.12.12.7 **DEFINITIONS:**

[Reserved.]

[3.12.12.7 NMAC - N, XXX]

3.12.12.8 **WEIGHT DISTANCE TAX IDENTIFICATION PERMIT TO BE ISSUED:**

A. Upon receipt of an approved application by a motor carrier, the department will issue weight distance tax identification permit(s) to the motor carrier for the number of vehicles they own that are subject to the weight distance tax. The motor carrier will be required to identify each permit they receive to a specific vehicle by indicating the unit and vehicle identification numbers on the face of the permit.

B. The weight distance tax identification permit is an administrative certificate that will be issued on non-reproducible paper to motor carriers who submit an approved application.

C. Weight distance tax identification permits issued by the department will only be valid for the calendar year for which they are issued.

[3.12.12.8 NMAC - N, XXX]

3.12.12.9 **WEIGHT DISTANCE TAX IDENTIFICATION PERMIT - ADMINISTRATIVE FEE:** Any

person that applies for and receives a weight distance tax identification permit shall pay an administrative fee of two dollars (\$2.00) for each permit. The administrative fee will be used to defray the costs incurred by the department for the processing and issuing of the weight distance tax identification permits. The administrative fee will be imposed for every permit, including annual renewals and replacements.

[3.12.12.9 NMAC - N, XXX]

3.12.10.8 **[ANNUAL TAX IDENTIFICATION CARD TO BE ISSUED:**

A. The department will

~~issue every person required under Section 7-15A-10 NMSA 1978 to pay the annual fee a tax identification card to be used for the purpose of establishing that the person has paid the annual fee.~~

~~B. The "tax identification card" may be paper, an affixable decal or an electronic identifier at the election of the department.] [RESERVED]~~

3.12.10.9 **[LEASE OPERATORS:**

~~A. Any person named on a valid tax identification card issued by the department is responsible for maintaining all records which demonstrate that any and all highway use taxes and fees incurred by the operation of registered vehicles on New Mexico highways have been paid.~~

~~B. When a vehicle is leased and there is no valid tax identification card issued by the department for it, the following persons shall be held ultimately responsible for demonstrating that all applicable fees and taxes have been paid. In the event that such payment cannot be demonstrated, these same persons shall be held financially responsible for payment of all unpaid fees and taxes due, and the vehicle may be detained until such payment has been made.~~

~~(1) If the commercial motor carrier vehicle is owned by a company which is in the business of vehicle rental or leasing and the vehicle is leased to customers without a driver, the vehicle owner (lessor) is financially responsible.~~

~~(2) If the commercial motor carrier vehicle is owned by an owner/operator and both the owner/operator (lessor) and the vehicle falls under the employment or control and custody of the lessee, the lessee is financially responsible.] [RESERVED]~~

3.12.11.8 **[FEE SCHEDULE APPLIES TO LARGEST SIZE OF FLEET:**

~~A. The fee schedule in Section 7-15A-11 NMSA 1978 applies to the largest size of the fleet during a year.~~

~~B. Example 1: In January, 19xx, a taxpayer registers ten (10) vehicles and pays the \$25 fee specified in Section 7-15A-11 NMSA 1978. Later that same year, the taxpayer trades in one vehicle for a new vehicle. His total registered fleet remains at ten (10) vehicles and no additional fee is due.~~

~~C. Example 2: In January, 19xx, a taxpayer registers forty nine (49) vehicles and pays the \$125 fee specified in Section 7-15A-11 NMSA 1978. Later that same year, the taxpayer trades in one vehicle from his fleet and acquires three new vehicles. His total registered fleet is now fifty one (51) vehicles and an additional~~

\$75 fee is due.] [RESERVED]

End of Notices and Proposed Rules Section

Adopted Rules

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.100 NMAC, Sections 2; 4; 6; 7; 12; 13; 14; 15; 16; 17; 18; 20; 22; 23; 25; and 26. These amendments addressed federally required updates to the vehicle inspection program, locally needed updates, and general housekeeping. This amendment is effective 5/1/04.

20.11.100.2 SCOPE:

A. Applicability (vehicles to be inspected): All motor vehicles, as defined in 20.11.100.7 NMAC, shall be inspected for compliance with the requirements of this part unless otherwise exempted. A vehicle shall not be registered or re-registered until the vehicle has passed the applicable on-board diagnostics (OBDII) inspection, exhaust emissions inspection, tampering inspection, pressurized gas cap test and visible emissions inspection prescribed by 20.11.100.14 NMAC or the program has issued a time extension for repairs of the vehicle, unavailability for testing, or reciprocity for a test from another state.

B. Commuter vehicles: All motor vehicles, which are more than four years old and are driven into, operated, or are otherwise present in Bernalillo county for 60 or more days per year but are registered in another county or state must comply with this part.

[B]C. Federal installations: Vehicles, which are operated on federal installations located in Bernalillo county, shall comply with this part whether or not the vehicles are registered in New Mexico or Bernalillo county. The inspection requirement applies to all employee owned or leased vehicles as well as agency operated vehicles. The inspection requirements for federal installations are mandated by 40 CFR Part 51.

[C]D. Fleet vehicles: Fleet vehicles, which are registered outside of Bernalillo county but are primarily operated in Bernalillo county, shall comply with this part. The inspection requirements for fleet vehicles are mandated by 40 CFR Part 51.

[D]E. Municipalities and counties: If the program enters into a joint powers agreement with a municipality or county to extend the enforcement of this part, all vehicles registered in that municipality or county must comply with this part. [5/20/88. . .12/1/95; 20.11.100.2 NMAC - Rn, 20 NMAC 11.100.1.2, 10/1/02; A,

5/1/04]

20.11.100.4 DURATION: Permanent, unless the violation described in 20.11.101 NMAC ~~occurs~~ occurs. [12/1/95; 20.11.100.4 NMAC - Rn, 20 NMAC 11.100.1.4, 10/1/02; A, 5/1/04]

20.11.100.6 OBJECTIVE: The objective of this part is to provide for the control and regulation of ~~[CO and HC]~~ carbon monoxide, hydrocarbon, and particulate emissions above certain levels from motor vehicles, and anti-tampering. [10/19/82. . .12/1/95; 20.11.100.6 NMAC - Rn, 20 NMAC 11.100.1.6, 10/1/02; A, 5/1/04]

20.11.100.7 DEFINITIONS: In addition to the definitions in 20.11.100.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this part shall govern.

A. "Air care inspection station" means a private business authorized by certificate in accordance with 20.11.100.18 NMAC to inspect motor vehicles and issue certificates of inspection. It also means stations established by the city of Albuquerque and Bernalillo county, or other governmental entities for testing government owned or leased motor vehicles.

B. "Air care inspector" means an individual authorized by a certificate issued by the program to perform inspections of motor vehicles and who has met the requirements of 20.11.100.21 NMAC.

C. "Air care station" means both an *air care* inspection station and a fleet *air care* station.

D. [~~Air~~ Care Technician] ~~means an individual certified in accordance with 20.11.100.23 NMAC of this Part to repair and adjust motor vehicles, which are subject to inspection pursuant to this Part~~ [Reserved]

E. "Biennial" means every other year.

F. "Chassis" means the complete motor vehicle, including standard factory equipment, exclusive of the body and cab.

G. "City" means the city of Albuquerque, a New Mexico municipal corporation.

H. "County" means the county of Bernalillo, a political subdivision of the state of New Mexico.

I. "Dealer" means any person who sells or solicits or advertises the sale of new or used motor vehicles subject to registration in the state of New Mexico

and as further defined in the Motor Vehicle Code Chapter 66, NMSA 1978.

J. "Distributor" means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer.

K. "Division or VPMD" means the vehicle pollution management division of the city environmental health department, which provides the staff for the Albuquerque/Bernalillo county vehicle pollution management program.

L. "Driver" means every person who drives or is in actual physical control of a motor vehicle upon a highway or upon property used for inspections.

M. "Essential parts" means all integral and body parts of a vehicle of a type required to be registered under the Motor Vehicle Code, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model type or mode of operation.

N. "Exhaust emissions" means CO, HC and all other substances emitted through a motor vehicle's exhaust system, after passing downstream of the engine block exhaust ports and exhaust emissions control devices, if any.

O. "Exhaust emission control device" means equipment designed by the manufacturer of the vehicle and installed on a motor vehicle for the purpose of reducing pollutants emitted from the vehicle, or a system or engine modification designed by the manufacturer of the motor vehicle which causes a reduction of pollutants emitted from the vehicle, or equipment designed by the vehicle manufacturer to prevent damage to or tampering with other exhaust emission control devices.

P. "Fast idle condition or unloaded 2500 rpm" means an exhaust emissions inspection conducted with the engine of the vehicle running under an accelerated condition as required by 40 CFR Part 51.

Q. "Field audit gas" means a gas mixture with known concentrations of CO₂, CO, and HC that is used by the program to check the accuracy of exhaust gas analyzers used by authorized inspection stations.

R. "Fleet air care station" means any person, business, government entity, firm, partnership or corporation which provides for the construction, equipping, maintaining, staffing, managing and operation of authorized inspection station for the sole purpose of inspecting its private fleet of motor vehicles subject to this part, and not offering inspection services to its employees or the general public.

S. "Fuel" means any material that is burned by the engine of a vehicle in order to propel the vehicle.

T. "Gross vehicle weight" means the weight of a vehicle without load, plus the weight of any load thereon.

U. "Government vehicle" means a motor vehicle exempt from the payment of a registration fee and owned or leased by any federal, state, local, or other governmental entity.

V. "Headquarters" means the main office of the vehicle pollution management program.

W. "Highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

X. "Idle mode test" means an unloaded exhaust emissions test conducted only at the idle condition, as described in the VPMP procedures manual.

Y. "Inspection or re-inspection or test" means the mandatory vehicular anti-tampering and emissions inspection conducted both visually and with equipment or chemical sensing devices as required by this Part.

Z. "Low emissions tune-up" means adjustments and repairs, which can reduce motor vehicle emissions including but not limited to the following procedures:

(1) checking and setting to manufacturer's specifications, the idle mixture, idle speed, ignition timing and dwell, and

(2) checking for proper connection of vacuum lines, electrical wires, and for proper operation of pollution control devices, and

(3) checking and replacement of air breathing filters and positive crankcase ventilation valve as necessary, and

(4) replacement of spark plugs, points, wires, and

(5) for all motor vehicles equipped with computer controlled closed-loop feedback exhaust emission control devices and systems, inspecting the operation of the emission control system according to the motor vehicle manufacturer's specified procedures, including hose routing and on-board diagnostics, new vehicle warranty, and repair or replacement as necessary.

AA. "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered under the laws of the state of New Mexico.

BB. "Manufacturer's certificate of origin or MCO" means a certifi-

cation, on a form supplied by or approved by the MVD, signed by the manufacturer, stating that the new vehicle described therein has been transferred to the New Mexico dealer or distributor named therein or to a dealer duly licensed or recognized as such in another state, territory or possession of the United States and that such transfer is the first transfer of such vehicle in ordinary trade and commerce. Every such certificate contains a space for proper reassignment to a New Mexico dealer or to a dealer duly licensed or recognized as such in another state, territory or possession of the United States. The certificate also contains a description of the vehicle, the number of cylinders, type of body, engine number and the serial number or other standard identification number provided by the manufacturer of the vehicle, where such exists.

CC. "Model year" means the year of manufacture of the vehicle based on the annual production period of the vehicle as designated by the manufacturer and indicated on the title and registration of the vehicle. If the manufacturer does not designate a production period for the vehicle, then the model year means the calendar year of manufacture.

DD. "Motor vehicle" means any vehicle which:

(1) is propelled by a spark ignition, internal combustion engine, and

(2) has four or more wheels in contact with the ground, and

(3) is subject to registration with the MVD to an owner of record who is domiciled within Bernalillo County, or is a government vehicle which is assigned to a governmental unit within Bernalillo County, and

(4) has a GVW greater than 1,000 and less than ~~26,000~~ 10,001 pounds, and

(5) is for use upon public roads and highways, and

(6) is a 1975 model year or newer, and

(7) is a vehicle not otherwise exempted by this part.

EE. "New motor vehicle" is a vehicle, which has undergone a transfer of ownership and is being registered for the first time to any person except in the sale to another licensed motor vehicle dealer for the purpose of resale as a new vehicle.

FF. "Operator" means driver, as defined in this part.

GG. "Owner" means a person who holds the legal title of the motor vehicle or, in the event a vehicle is the subject of an agreement for conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mort-

gagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor.

HH. "Pass fail criteria" means those standards set by this part which specify the maximum allowable motor vehicle exhaust emissions under appropriate specified operating conditions.

II. "Person" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or legal representative, agent, or assign.

JJ. "Program or VPM program" means the Albuquerque/Bernalillo county vehicle pollution management program.

KK. "Program manager" means a classified city employee selected in accordance with provisions of the Joint Powers Agreement between the city and the county to perform for the joint air quality control board those duties required to enforce and administer the provisions of this part, or the program manager's designee.

LL. "Reconstructed vehicle" means any vehicle which shall have been assembled or constructed largely by means of essential parts, new or used, derived from other vehicles or makes of vehicles of various names, models and types or which, if originally otherwise constructed, shall have been materially altered by the removal of essential parts, new or used, derived from other vehicles or makes of vehicles.

MM. "Registration and re-registration" [~~mean~~ means] both original registration, and renewal of motor vehicles as provided in the New Mexico Motor Vehicle Code, Chapter 66 NMSA 1978.

NN. "Shall be inspected" means the vehicle shall be subjected to testing and inspection as applicable to model year and weight classification and shall satisfy the criteria of this part as evidenced by the issuance of a certificate of inspection.

OO. "Standard gases" means NIST certified emissions samples of gases maintained as primary standards for determining the composition of working gases, field audit gases, or the accuracy of analyzers.

PP. "Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property. In addition, all vehicles with a GVW greater than 6000 pounds shall be considered a truck.

QQ. "VEGAS" means a program-certified, garage-type, computer controlled NDIR vehicle exhaust gas analyzer system which is capable of performing a preconditioned two-speed idle test on-

board diagnostic test, and pressurized gas cap test on vehicles as required by 40 CFR Part 51 appendix B to Subpart S and meets or exceeds the specifications adopted by the program.

RR. "VIR" means vehicle inspection report, a program-certified document (VIR) signed by a certified *air care* inspector or other program authorized official stating that the vehicle described therein is either in compliance (pass), not in compliance (fail), or has an approved time extension in order to achieve compliance through additional repairs or adjustments (time-limit extension).

SS. "Visible emissions" means any fume, smoke, particulate matter, vapor or gas, or combination thereof, except water vapor or steam.

TT. "VPMP procedures manual or procedures manual" means a compilation of procedures developed by the program manager pursuant to 20.11.100.12 NMAC.

UU. "Wholesale" means either any person selling or offering for sale vehicles of a type subject to registration in New Mexico to a vehicle dealer licensed under the Motor Vehicle Code, Chapter 66, NMSA 1978, or any person who is franchised by a manufacturer, distributor or vehicle dealer to sell or promote the sale of vehicles dealt in by such manufacturer, distributor or vehicle dealer, but does not include the act of selling a vehicle at retail as a dealer subject to the dealer-licensing provisions of the Motor Vehicle Code.

VV. "Working gases" means program-approved span gases maintained by an authorized *air care* inspection station to perform periodic calibration of approved exhaust gas analyzers.

WW. Abbreviations and symbols

(1) **A/F:** means air/fuel

(2) **ASE:** means the National Institute for Automotive Service Excellence

(3) **CO:** means carbon monoxide

(4) **CO₂:** means carbon dioxide

(5) **DTC:** means diagnostic trouble code

~~(5)~~(6) **EPA:** means the Environmental Protection Agency

~~(6)~~(7) **GVW:** means gross vehicle weight

~~(7)~~(8) **HC:** means hydrocarbon

~~(8)~~(9) **HP:** means horsepower

~~(9)~~(10) **LNG:** means liquefied natural gas

~~(10)~~(11) **LPG:** means liquefied petroleum gas

~~(11)~~(12) **MPH:** means miles per hour

~~(12)~~(13) **MCO:** means manufacturer's certificate of origin

~~(13)~~(14) **MVD:** means the

Motor Vehicle Division of the New Mexico Taxation and Revenue Department

~~(14)~~(15) **NDIR:** means non-dispersive infrared

~~(15)~~(16) **NIST:** means National Institute of Standards and Technology

(17) **OBDII:** means On-Board Diagnostics second generation

~~(16)~~(18) **%:** means percent

~~(17)~~(19) **PCV:** means positive crankcase ventilation

~~(18)~~(20) **ppm:** means parts per million by volume

~~(19)~~(21) **VIN:** means vehicle identification number

~~(20)~~(22) **40 CFR PART 51:** means the EPA regulations for inspection/maintenance programs published in the federal register on November 5, 1992 and mandated by the Federal Clean Air Act Amendments of 1990.

[10/12/82. . 5/20/88, 11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.7 NMAC - Rn, 20 NMAC 11.100.I.7, 10/1/02; A, 5/1/04]

20.11.100.12 INSPECTION PROCEDURES:

A. VPMP Procedures manual:

(1) The program manager shall develop an official document, entitled VPMP procedures manual, outlining in sufficient detail the procedures necessary for a certified *air care* station, a certified *air care* inspector and a certified *air care* technician to comply with all applicable requirements of this part. Upon approval by the board, the program manager shall publish the official VPMP procedures manual and, within ~~ten~~ 10 days of publication, provide notice of its availability.

(2) The procedures, details and specifications contained in the VPMP procedures manual will be a part of and incorporated into this part and shall be binding upon each *air care* inspection station, *air care* station owner/operator, *air care* inspector and *air care* technician.

(3) The procedures manual shall be amended as needed. Notice of amendments to the procedures manual shall be provided by the program manager, with copies made available to the users. It is the responsibility of each *air care* station owner/operator to obtain and incorporate all amendments made available by the program manager. Each *air care* station shall maintain at least one current copy of the VPMP procedures manual at each *air care* inspection station.

(4) If a provision of the procedures manual conflicts with a provision of this part, the provision of this part will prevail.

B. Vehicle tests:

(1) To determine if a motor vehi-

cle is in compliance with this part all inspections shall be performed in strict accordance with this part and the VPMP procedures manual. Each vehicle shall be inspected at an *air care* station by an *air care* inspector. All items shall be tested to completion with reports of outcomes provided to the motor vehicle owner.

(a) Vehicles with an engine other than the engine originally installed by the manufacturer or an identical replacement of such an engine shall be subject to the inspection procedures and standards for the chassis type, GVW, and model year of the vehicle.

(b) Assembled vehicles or kit cars shall meet the standards and emission control equipment as requirements for the year of the vehicle engine. If the vehicle is assembled with pre-1975 engine, testing is not required, but the vehicle owner must petition the program manager for an exemption from emission inspections.

(2) Exhaust gas emissions measurements: No emissions inspection required by this part shall be performed unless the instrument used for measuring exhaust gases from the motor vehicle is an approved VEGAS.

(a) Vehicle operating condition:

(i) Prior to this portion of the inspection, the entire vehicle shall be in normal operating condition as specified by the emissions tune-up label originally installed on the vehicle or as specified in the VPMP procedures manual. Motor vehicles equipped for simple selection of alternate fuel supplies, switching between gasoline and any compressed or liquefied gaseous fuel shall be inspected using the fuel in use when presented for inspection.

(ii) All 1975 - 1995 model year motor vehicles subject to this part shall be required to take and pass a pre-conditioned two-speed idle test as outlined in appendix B to Subpart S of 40 CFR part 51 and the VPMD procedures manual. The test procedure will include a first and second chance test at both idle and at the unloaded 2500 RPM test. If the vehicle passes both emission tests, it shall be deemed in compliance with minimum emissions standards unless the vehicle fails the tampering inspection, pressurized gas cap test, or visible emissions inspection required by this part.

(iii) All 1996 and newer model year motor vehicles subject to this part shall be required to take and pass an on-board diagnostic test, pressurized gas cap test, and visible emissions inspection as outlined in 40 CFR part 51 and the VPMD procedures manual. Certain vehicles which are not OBDII compatible may be tested using the two-speed idle test as determined by the program manager.

~~(iii)~~(iv) No test shall commence if there are apparent leaks in the motor vehicle's exhaust system that will cause the exhaust analyzer to invalidate the test.

~~(iv)~~(v) Pattern failure notices issued by EPA shall be maintained by the *air care* station and *air care* inspector in an up-to-date file for reference to unusual pretest conditioning.

(b) Pretest: Vehicles presented to an *air care* station for inspection shall not be pre-tested by having manual diagnostic emissions analysis or visual examination for tampering performed prior to the beginning of the inspection. This shall not prohibit diagnostic engine analysis service of vehicles when specifically presented for such, before emission testing.

(c) Exhaust emissions inspection: The exhaust emissions inspection shall proceed as specifically described in 40 CFR Part 51 Appendix B to Subpart S and the VPMP procedures manual.

(d) Selection of appropriate pass/fail emissions inspection criteria: The appropriate pass/fail criteria will be selected automatically by the approved VEGAS.

(3) Visual examination for tampering: The certified *air care* inspector shall determine specifically what emissions control devices should be in place and operable for each 1975 - 1995 model year vehicle inspected. ~~[This shall be done by first consulting the emissions control information sticker under the hood. If this information is missing, suspect, or otherwise lacking the inspector shall check a reference manual or applications guide, which states how the vehicle was equipped as manufactured and/or certified for sale or use within the United States.]~~ Specific design and equipment elements necessary in anti-tampering determinations shall only include catalytic ~~converter~~ converter(s) ~~[air injection reaction system and oxygen (O₂) sensor].~~

(4) Visible emissions requirements: In addition to exhaust and tampering requirements of this part, all vehicles are subject to and must pass inspection for visible emissions (smoke). Non-diesel vehicles may not emit any visible emissions (except steam) during the test as described in Paragraph (3), of Subsection A of 20.11.100.14 NMAC.

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95, 8/1/97; 20.11.100.12 NMAC - Rn, 20 NMAC 11.100.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.100.II.1, 10/1/02; A, 5/1/04]

20.11.100.13 SCHEDULING OF INSPECTIONS:

A. Inspection and regis-

tration: Every motor vehicle, as defined in Section 20.11.100.7 NMAC, shall be inspected biennially when the owner is so notified or otherwise informed by MVD, unless the ~~[conditions described in 20.11.100.29 NMAC require annual inspection.]~~ vehicle is a 1975-1985 model year motor vehicle in which case the inspection requirement shall be annual. Any 1986 - 1995 model year motor vehicle which is determined to emit quantities (rates) of CO and/or HC between 75% and 100% of any of its maximum allowable standards listed in Table I of Subsection A of 20.11.100.14 NMAC shall be issued a pass certificate good only for a one year registration and shall be required to be inspected again the following year prior to re-registration. The MVD will distribute notices or other appropriate information to owners of vehicles applying for re-registration in accordance with the written agreement made with the program manager. Vehicles shall also be inspected upon sale or when titles are transferred. Any person who believes he/she has a vehicle for which he/she has been erroneously notified of inspection may petition the program manager to correct such error.

B. Vehicles unavailable for inspection: Motor vehicles, which are unavailable for inspection, may be granted an extension of inspection if authorized by the program manager. Persons seeking such extension may petition the program manager by submitting a signed affidavit justifying the special need and by providing other necessary documentation as required by the program manager.

C. Federal, state and local government vehicles:

(1) Each motor vehicle operated in Bernalillo county which is owned or leased by the United States government, the state of New Mexico or any local government entity shall be inspected biennially.

(2) Scheduling vehicles under this subsection shall be established by the responsible governmental authority pursuant to an agreement with the program manager. Such schedules shall only be approved if the program manager determines that they are consistent with the scope and goals of this part.

(3) Persons who are responsible for such government fleet vehicles or motor pools shall periodically, but not less than annually, update the vehicle inventory and forward the resulting inspection plan with inventory to the program manager.

[5/20/88. . .9/23/94, 12/1/95, 20.11.100.13 NMAC - Rn, 20 NMAC 11.100.II.2, 10/1/02; A, 5/1/04]

20.11.100.14 INSPECTION CRITERIA:

Failure to pass any one of the applicable criteria specified below in

~~Subsections A, B, and C of this Section, entitled exhaust emissions, anti tampering, and C, D and E of Section 20.11.100.14 NMAC, entitled exhaust emissions, anti-tampering, visible emissions, gas cap, and on-board diagnostics respectively; shall constitute noncompliance with this part and a fail VIR shall be issued.~~

A. Exhaust emissions:

(1) Any motor vehicle which is determined to emit quantities (rates) of CO and HC greater than those listed in Table I appropriate to model year and weight classification listed shall be *failed* and those with emission rates equal to or lower than the applicable amounts shall be *passed* under ~~this~~ subsection A of 20.11.100.14 NMAC.

[See: Table I, page 243]

TABLE I

Maximum Allowable Exhaust Emissions

Vehicle Model Year	Gross Vehicle Weight Rating (pounds)	Group Code	Unloaded			
			Idle Mode		2500 RPM Test	
			HC PPM	CO %	HC PPM	CO %
1975-1976	0 to 6000	C/T	700	6.0	700	6.0
1977-1978	0 to 6000	C/T	600	5.0	600	5.0
1979-1980	0 to 6000	C/T	500	4.0	500	4.0
1981-newer	0 to 6000	C/T	220	1.2	220	1.2
1975-1978	6001 to 8000	LT	900	6.0	900	6.0
1979-1980	6001 to 8000	LT	750	4.5	750	4.5
1981-1982	6001 to 8000	LT	650	2.7	400	3.0
1983-newer	6001 to 8000	LT	400	1.2	300	3.0
1975-1980	8001 to 10,000	MT	950	6.5	950	6.5
1981-1983	8001 to 10,000	MT	800	5.4	450	3.5
1984-newer	8001 to 10,000	MT	630	4.0	400	3.0
1975-1980	10,001 to 25,999	HT	950	6.5	950	6.5
1981-1986	10,001 to 25,999	HT	800	5.5	500	3.5
1987-newer	10,001 to 25,999	HT	440	2.0	400	3.0

TABLE I

Maximum Allowable Exhaust Emissions

Vehicle Model Year	Gross Vehicle Weight Rating (pounds)	Group Code	Unloaded			
			Idle Mode		2500 RPM Test	
			HC PPM	CO %	HC PPM	CO %
1975 - 1978	0 to 6000	C/T	500	5.0	500	5.0
1979 - 1980	0 to 6000	C/T	400	4.0	400	4.0
1981 - 1985	0 to 6000	C/T	220	1.2	220	1.2
1986 - 1990	0 to 6000	C/T	200	1.2	200	1.2
1991 - 1995	0 to 6000	C/T	180	1.2	180	1.2
1975 - 1978	6001 to 8000	LT	600	6.0	600	6.0
1979 - 1980	6001 to 8000	LT	600	4.5	600	4.5
1981 - 1982	6001 to 8500	LT	400	2.7	400	3.0

<u>1983 - 1988</u>	<u>6001 to 8500</u>	<u>LT</u>	<u>300</u>	<u>1.2</u>	<u>300</u>	<u>3.0</u>
<u>1989 - 1995</u>	<u>6001 to 8500</u>	<u>LT</u>	<u>220</u>	<u>1.2</u>	<u>220</u>	<u>1.2</u>
<u>1975 - 1980</u>	<u>8001 to 10,000</u>	<u>MT</u>	<u>650</u>	<u>6.5</u>	<u>650</u>	<u>6.5</u>
<u>1981 - 1990</u>	<u>8501 to 10,000</u>	<u>MT</u>	<u>400</u>	<u>4.0</u>	<u>400</u>	<u>3.0</u>
<u>1991 - 1995</u>	<u>8501 to 10,000</u>	<u>MT</u>	<u>220</u>	<u>2.0</u>	<u>220</u>	<u>2.0</u>

Note: These criteria will be reviewed by the board annually pursuant to the urban implementation plan for Albuquerque-Bernalillo county. Adjustments will be promulgated as appropriate.

B. Anti-tampering:

(1) All 1975 - 1995 model year motor vehicles subject to this part shall be inspected for the presence and proper connections of catalytic converter(s). ~~original design features and components designed to reduce CO and HC exhaust emissions. The features and components are as follows:~~

- (a) Catalytic converter(s);
- (b) Oxygen sensor;
- (c) Air pump or air aspiration system as applicable.]

(2) Any vehicle with such features or components removed or rendered inoperative shall be *failed* under this subsection. If no tampering is evident with these components or systems, this portion of the inspection shall be *passed*.

(3) Vehicles which have had the original engine removed and replaced with a newer and/or inherently cleaner technology engine including the emission control devices required in association with that engine may be eligible for a waiver of compliance with portions of this subsection. The program manager or designee shall determine if a vehicle has been retrofitted with an engine that is not adaptable to the emission control requirements for the vehicle chassis model year. Upon such determination, the program manager may waive the requirements for replacement of emission control equipment. There shall be no waiver for the installation of a catalytic converter ~~or fuel filler neck restrictor~~ unless the program manager determines installation would create a safety hazard.

C. Visible emissions

(smoke): All non-diesel vehicles subject to inspection must pass an inspection for visible emissions. Prior to conducting the OBDII or two-speed idle test, the air care inspector will observe the tailpipe for visible smoke while the driver raises the engine speed to 2200 - 2800 rpm for a minimum of 10 seconds to be followed immediately by

observation at idle for a minimum of 10 seconds. The *air care* inspector will watch the tailpipe ~~as the vehicle enters the facility,~~ during the idle portion of the emissions test and during the high-speed portion of the emissions test (using a mirror if necessary). If the inspector observes *any* smoke (not steam) during any part of the inspection, the visible portion of the emissions test shall be a *fail*.

D. Gas cap (pressurized):

All vehicles subject to inspection must pass a pressurized gas cap test to check the integrity of the gas cap seal designed to minimize fuel vapor loss or hydrocarbon emissions. Any vehicle with a gas cap that does not hold pressure consistent with the design standard for the vehicle shall be failed. Gas cap testing for 1996 and newer OBDII tested vehicles shall not commence until 2005 and shall be limited to vehicles that are at least four years old.

E. On-board diagnostics

(OBDII): All 1996 and newer motor vehicles must pass an on-board diagnostics test consistent with 40 CFR Part 51. Any vehicle with an illuminated malfunction indicator lamp (MIL) and/or a set diagnostic trouble code (DTC) shall be failed. There will be a one year phase-in period (2004) during which any vehicle which fails the OBDII test will default to the two-speed idle test. Vehicles which fail the OBDII test during phase-in but pass the two-speed idle test with maximum allowable exhaust standards of 100ppm hydrocarbons and 1.0% carbon monoxide will be issued a pass certificate valid only for a one year registration. Certain 1996 and newer model year vehicles which have been determined by the program manager to be OBDII incompatible shall be tested using the two-speed idle test with maximum allowable exhaust standards of 100 ppm hydrocarbons and 1.0 % carbon monoxide.

[10/19/82. . .5/20/88, 9/23/94, 12/1/95, 8/1/97, 20.11.100.14 NMAC - Rn, 20 NMAC 11.100.II.3, 10/1/02; A, 5/1/04]

20.11.100.15 VEHICLE INSPECTION REPORT:

- A. Vehicle inspection

reports (VIRs) shall only be purchased at program headquarters. Unused VIRs shall not be exchanged, sold or given by any person to any other person. All unused VIRs which, a person, does not intend to use shall be turned in to the headquarters for credit or a refund, as the program manager determines is appropriate.

B.

A pass VIR shall be issued to each motorist whose vehicle has undergone inspection and passed all criteria relative to on-board diagnostics, exhaust emissions, anti-tampering, pressurized gas cap and visible emissions as applicable. A fail VIR shall be issued to each motorist whose vehicle has undergone inspection and failed on-board diagnostics or any of the criteria relative to exhaust emissions, anti-tampering, pressurized gas cap and visible emissions as applicable. Vehicles, which have failed any portion of an inspection and have been subsequently repaired and adjusted and passed a reinspection, shall be issued a pass VIR. Pass VIRs shall be presented to the MVD upon re-registration of the vehicle.

[11/13/91. . .8/25/92, 9/23/94, 12/1/95; 20.11.100.15 NMAC - Rn, 20 NMAC 11.100.II.4, 10/1/02; A, 5/1/04]

20.11.100.16 REPAIRS, ADJUSTMENTS, AND RE-INSPECTIONS:

Each motor vehicle that fails an inspection required by this part shall be repaired as necessary to pass re-inspection. Where replacement of parts is required, such parts shall only be new aftermarket parts approved by the program manager or new original equipment, manufacturer's parts or assemblies.

A.

Repairs required by this subsection shall include but are not limited to, the following as applicable to the type of failure.

(1) Exhaust emissions: adjust idle speed, fuel/air ratio and ignition timing to manufacturer's specifications including replacement of spark plugs, spark plug wires, air filters and PCV specified by the manufacturer.

(2) Anti-tampering: replace the missing or disabled components with

replacement parts acceptable to the program manager.

(3) Visible emissions: Repair engine or replace inoperative emission control devices as required to eliminate visible emissions.

(4) Gas cap: Replace gas cap with a new approved aftermarket or original equipment cap.

(5) On-board diagnostics: Repair malfunction(s) indicated by diagnostic trouble code(s), clear diagnostic trouble code(s) and drive vehicle through drive cycle required to reset readiness monitors in order to ensure repair effectiveness and elimination of diagnostic trouble codes.

B. Any person may repair, adjust or replace parts as necessary to prepare a vehicle to pass re-inspection.

C. Re-inspections may be obtained at any *air care* station. One free retest, within 90 calendar days of a failed test, may be obtained at the program headquarters, if requested.

[10/19/82. . .12/1/95; 20.11.100.16 NMAC - Rn, 20 NMAC 11.100.II.5, 10/1/02; A, 5/1/04]

20.11.100.17 COMPLIANCE TIME EXTENSION: Normal Difficulty:

A. Vehicles, which are unable to pass re-inspection, are eligible to obtain a time extension providing the following conditions are met:

(1) Exhaust emissions: In order for a motor vehicle to be eligible for a time extension, the owner must:

(a) provide evidence, satisfactory to the program manager, that a low emissions tune-up has been performed to the extent possible considering engine condition; repair and replace nonfunctional emissions control devices,

(b) provide evidence that any emissions control devices needed to bring the vehicle into compliance are not available,

(c) petition the program manager at the program headquarters, provide receipts for all parts and/or repair work performed, and list at least the following information in order to be eligible for consideration:

(i) vehicle VIN number,
(ii) model year and manufacturer,

(iii) owner's name and street address,

(iv) valid driver's license number and/or any other information or documentation that the program manager may deem necessary, and

(v) if applicable, identification of where the re-inspection, tune-up and/or determination was made, including documentation acceptable to the program

manager that critical parts are unavailable.

(2) Anti-tampering: In order for a motor vehicle to be eligible for a time extension, the vehicle must pass all criteria relative to exhaust emissions for its model year and weight. If the vehicle cannot pass the exhaust emissions, in order for a motor vehicle to be eligible for a time extension, the owner must:

(a) provide evidence that a low emissions tune-up has been performed to the extent possible considering engine condition; repair and replace nonfunctional emissions control devices,

(b) provide evidence that any emissions control devices needed to bring the vehicle into compliance are not available,

(c) petition the program manager at the headquarters, provide receipts for all parts and/or repair work performed, and list at least the following information in order to be eligible for consideration:

(i) vehicle VIN number;

(ii) model year and manufacturer;

(iii) owner's name and street address;

(iv) valid driver's license number and/or any other information or documentation that the program manager may deem necessary; and

(v) if applicable, identification of where the re-inspection, tune-up, and/or determination was made including documentation acceptable to the program manager that critical parts are unavailable.

~~**(3) Time extensions for anti-tampering can be issued to the same owner for two registration cycles but are void and cannot be renewed upon the sale of the vehicle. The total extensions granted shall not exceed 24 months. The holder of the original time extension must inform each potential buyer that the vehicle does not comply with the emission requirements of this Part. The seller must also inform each potential buyer that the time extension is void upon the sale and the vehicle cannot be registered unless the vehicle passes an emissions inspection.**~~

~~**(4) Upon receipt of the petition the Program Manager may grant a time extension based upon the validity and applicability of the information provided.**~~

B. Time extension for repairs:

(1) Vehicles which require repair in addition to a low emission tune-up may be eligible for a time ~~[extensions]~~ extension [as specified below.] of up to 12 months

~~f~~ ~~(a) 12 month extension for repairs up to three hundred dollars (\$300); or~~

~~(b) 24 month extension]~~ for repairs over three hundred dollars (\$300).

(2) The vehicle owner must petition the program manager for a time extension for repairs. Upon receipt of the petition the program manager may grant a time extension based upon the validity and applicability of the information provided. In addition to the time extensions described above, the program manager has the discretion to issue time extensions for extraordinary circumstances and shall report such extensions on the next program report to the board.

(3) Time extensions shall be limited to 90 days for motor vehicles that exceed any of their maximum allowable exhaust standards as prescribed in Table I shown in Paragraph (1), of Subsection A of 20.11.100.14 NMAC by more than twice the level allowed.

C. Inspection due following extension: Any person owning a motor vehicle for which a time extension has been issued pursuant to this section shall have that vehicle inspected within the time frame specified by the extension for that vehicle.

D. Expiration upon sale: If a motor vehicle is granted a time extension under this section and is sold within the time extension period, such sale shall terminate the extension. The holder of the original time extension must inform each potential buyer that the vehicle does not comply with the emission requirements of this Part. The seller must also inform each potential buyer that the time extension is void upon the sale and the vehicle cannot be registered unless the vehicle passes an emissions inspection.

E. Appeals: Any person aggrieved by the decision of the program manager or designee regarding a compliance time extension may appeal by petitioning the director of the environmental health department (EHD). To perfect the appeal, the person aggrieved must deliver the completed form to the headquarters within ~~[fifteen]~~ 15 consecutive days after receipt of the program manager's decision. Following receipt of the request for hearing, the director of the EHD shall report his or her decision to the program within 48 hours of the determination. By the end of the next working day or sooner, if reasonably possible, the program shall report the decision of the director of the EHD to the petitioner. The director of the EHD will present written findings of fact and conclusions of law to the division within 45 days, and the program shall forward the findings and conclusions promptly to the petitioner.

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.17 NMAC - Rn, 20 NMAC 11.100.II.6, 10/1/02; A, 5/1/04]

20.11.100.18 CERTIFICATION REQUIREMENTS FOR AIR CARE

STATIONS:

A. No person shall solicit, advertise or imply that a facility is an *air care* station certified by the program manager to conduct inspections pursuant to this part without having a current program-issued certificate on display on the premises. Any *air care* inspection station that has its certification permanently or temporarily, withdrawn or canceled by the Board or the program manager shall immediately remove all inspection related signs and cease to represent the facility as a certified *air care* station.

B. No *air care* station owner or operator shall allow a person to conduct any part of an inspection pursuant to this part without that person being an *air care* inspector certified by the program manager and having a current program-issued certificate on display on the premises.

C. Any person may make application for certification for the operation of an *air care* station.

D. Prior to construction, installation or renovation of any facility or building intended for use as an *air care* station, the owner/operator must have submitted an application and received pre-approval to operate the facility as an *air care* station. The applicant shall also provide information on traffic flow and how it will be managed to prevent unsafe conditions. The applicant shall also indicate how and where the customer may view the vehicle inspection from start to finish.

E. The program manager may issue a station certificate to a person who makes application and demonstrates to the program manager's satisfaction the following minimum conditions will be in effect and equipment will be present at the applicant's proposed *air care* station:

(1) At least one certified *air care* inspector whose certification is current and listed with the program manager will be on hand and will conduct all the inspections of motor vehicles. No such inspection will be performed in whole, or in part, by any person other than a certified *air care* inspector.

(2) At least one approved VEGAS owned or leased by the station will be in place and operating within the equipment specification limits set forth in 20.11.100.25 NMAC.

(3) In order to qualify for certification, the facility shall also be equipped and supplied as follows:

(a) sufficient hand tools and automotive diagnostic equipment for proper performance of the inspections,

(b) program approved span gas and compatible equipment for performing gas span checks,

(c) suitable non-reactive tail pipe

extenders or probe adapters for inspecting vehicles with screened or baffled exhaust systems, and

(d) the approved VEGAS manufacturer's maintenance and calibration manual.

(4) The *air care* station must provide the vehicle owner or driver access to the test area so observation of the entire official inspection process is possible. Access may be limited but in no way shall prevent full observation from beginning to end.

(5) The program manager may deny certification to a facility that:

(a) does not comply with all applicable federal, state and local laws and regulations, or

(b) does not provide for an entrance and a dedicated inspection area inside the facility that is large enough to accept all vehicles with a GVW of 8500 lbs or less presented for inspection, or

(c) does not provide for adequate traffic flow, or

(d) does not provide adequate viewing access by the vehicle owner or driver or for surveillance by program auditors.

(6) Certified *air care* station owners/operators shall be responsible for the general management of their facility(ies) and for the supervision of their *air care* inspectors and technicians in accordance with this part, the VPMP procedures manual and other procedures and policies of the program.

F. "Emissions inspection-only" stations may be authorized by the program manager. Such stations shall indicate on a sign authorized by the program and placed in a readily visible location, that no emissions related adjustments or repair services are available. Repair related requirements of Paragraph (2), of Subsection G of 20.11.100.18 NMAC do not apply to "inspection-only" stations.

G. Performance of certified *air care* stations:

(1) A certified *air care* station will obtain and pay for routine and unscheduled maintenance or replacement parts of the approved exhaust gas analyzer.

(2) The certified *air care* station will accept and perform emissions inspections on all vehicles presented for inspection and must have adequate reference manuals and basic emissions information in accordance with the VPMP procedures manual. Emissions inspections will not be performed on vehicles when the emissions inspection would pose a threat to any person's safety. Any motor vehicle accepted for repair shall be one for which the station has adequate information regarding idle speed, idle mixture, timing, dwell, fast idle

speed specifications, high altitude specifications and information describing emissions control systems, diagnostic and repair procedures if normally available in the trade.

(3) The times that a certified *air care* inspector will be available to make inspections shall be posted if such times do not include all hours the station is open for business.

(4) Each certified *air care* station shall post a sign in a conspicuous location, on the exterior of the station, indicating testing hours and the fee charged for inspections. The sign shall meet the uniform format and style requirements established by the program manager.

(5) A certified *air care* station may not refuse any vehicle for inspection based upon the race, color, religion, sex, national origin or ancestry, age or physical handicap or disability of the motorist, nor may the station refuse any vehicle for inspection because of the make, model, or year of the vehicle.

(6) Each certified *air care* station shall provide vehicle owners or drivers access to the inspection area so that the owner or driver can observe the official inspection. Access can be limited but in no way shall prevent full observation.

(7) A certified *air care* station shall perform initial emissions inspection on vehicles without repair or adjustment prior to the inspection. This does not apply to a vehicle when an owner or driver specifically asks for repairs or adjustments prior to an emissions inspection and a work order is completed and authorized by the vehicle owner or driver.

(8) Each certified *air care* station must employ a sufficient number of *air care* inspectors so that it can adequately staff regular testing hours, as set by the *air care* station and approved by the program manager.

(9) Each *air care* station must ensure that emissions inspections are performed on every vehicle, upon presentation, unless a vehicle test poses a threat to a person's safety. An *air care* station which is not designated as an "inspection only" station may elect to conduct testing "by appointment only," as approved by the program manager, but must indicate this on the station sign in lieu of testing hours.

H. Any person owning or operating a certified *air care* station which undergoes change of business name, ownership, official inspection personnel, or approved exhaust gas analyzers, or ceases to operate as an *air care* station, shall notify the program manager within ~~ten~~ 10 days of such change. Any certified *air care* station may have its certification revoked for failure to provide such notice. Relocation of an *air care* station, without review and

written approval of the program manager being required, shall automatically terminate and invalidate a current station certificate.

[5/20/88. . .11/13/91, 9/23/94, 12/1/95, 8/1/97; 20.11.100.18 NMAC - Rn, 20 NMAC 11.100.II.7, 10/1/02; A, 5/1/04]

20.11.100.20 VEHICLE POLLUTION MANAGEMENT PROGRAM HEADQUARTERS:

A. The program manager shall establish and maintain a VPMP headquarters, to be an emissions inspection facility equipped with at least one program certified VEGAS from each manufacturer participating in the program, and employing at least two ASE certified technicians. The facility shall be operated by the city to provide services to the public and as necessary to facilitate program responsibilities and administer the provisions of this part.

B. The headquarters shall have, but not be limited to, the following responsibilities:

(1) Provide for non-binding mediation of disputes arising from inspection activities by certified *air care* stations or certified *air care* inspectors [~~or certified AIR CARE technicians~~], to include if necessary a verification test at no cost to the person requesting such test.

(2) Evaluate and issue a compliance time extension for vehicles unable to pass the inspection test criteria as provided under the terms of this part.

(3) Investigate and maintain records regarding complaints against certified *air care* stations, certified *air care* technicians and certified *air care* inspectors, and forward such findings to the board.

(4) Perform quality assurance audits as required by 20.11.100.24 NMAC. [5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.20 NMAC - Rn, 20 NMAC 11.100.II.9, 10/1/02; A, 5/1/04]

20.11.100.22 CERTIFICATION OF AIR CARE TECHNICIANS: [No person shall represent him or herself as a certified Air Care technician without being in possession of a duly authorized and currently valid certificate issued by the Program Manager. Certificates issued under this subsection shall be valid for 12 months unless the Program Manager subsequently requires re-certification sooner for a reason provided below in Subsection B of 20.11.100.22 NMAC.

A. Certification Requirements For Air Care Technicians:

(1) A person desiring to be certified shall file an application with the Program Manager on forms provided by the Program. The issuance of certificates shall be administered by the Program. Before an

applicant may be granted a certificate, the applicant must demonstrate general knowledge, skill and competence requirements under the Program and in accordance with training and testing requirements set forth by the Program Manager.

(2) The competency test required by this section shall include, but not be limited to, knowledge of the following:

(a) The use of a Program approved emissions systems reference guide, which must be on hand at the AIR CARE station and be followed during repairs and adjustment of systems.

(b) Basic understanding of possible causes and effects of timing and air/fuel ratio on emissions.

(c) The need, when applicable, for high altitude adjustments to be employed in manufacturer's specifications.

(d) The regulatory constraints on vehicles for which special time extensions may be needed.

(e) How to use on board diagnostics, latest shop diagnostic tools and instruments available to automotive emissions technicians.

(f) The provisions of the Emissions Control Systems Performance Warranty provided as required by Section 207(b) of the Federal Clean Air Act as it applies to the inspection.

(g) The emissions control equipment for 1975 and newer vehicles that are essential to satisfy this regulation, and the ability to recognize equipment which is not necessary to repair or adjust so the motorist's adjustment costs can be kept at a minimum.

(h) The regulations and procedures under which the Program operates.

(3) Persons certified under this subsection shall inform the Program Manager within ten days of any change in legal name, employment status, or current mailing address. Each certified technician will be assigned a personal identification number which will be checked for correlation in data audits of the Program. Failure to keep the Program Manager informed may be cause for invalidation of certification.

(4) The Program Manager may waive those portions of the test described above in Subparagraphs (a), (b), (c), (e), and (g), of Paragraph (2), of Subsection A of 20.11.100.22 NMAC upon the applicant's submittal and the Program's acceptance of current certification in engine repair and engine performance from the ASE, or other nationally recognized automotive certification authority, or a showing of equivalent education and experience in emission control, testing and engine repair, as determined by the Program Manager.

B. Re-certification Requirements For Certified Air Care

Technicians:

(1) The Program Manager will reissue certification to an AIR CARE technician who demonstrates updated competency as evidenced in then current requirements administered by the Program. Such re-certification shall be required either at the expiration of a current annual certificate or sooner as provided below.

(a) If the Board determines a need to update the qualifications of AIR CARE technicians prior to the annual re-certification period, holders of such certificates may be required to re-qualify.

(b) As a result of auditing or investigating consumer complaints, a certified AIR CARE technician may be required to re-certify if the Program Manager determines that a competency related problem must be corrected in order to protect the public.

(2) Certified AIR CARE technicians must re-certify within ninety (90) days prior to the date of expiration of a current certification. The Program shall mail written notification to the station address of record to each active technician whose certificate is about to expire or is otherwise being revoked. The notice shall inform the person of the necessity for re-certification and the nature of such skills, systems or any updated procedures or retraining deemed necessary for performance of adequate emissions repairs. The notice shall state the deadline for re-certification. [Reserved] [5/20/88. . .8/25/92, 9/23/94; 20.11.100.22 NMAC - Rn, 20 NMAC 11.100.II.11, 10/1/02; A, 5/1/04]

20.11.100.23 EXEMPTED SPECIAL VEHICLES CLASSIFICATIONS:

A. All new motor vehicles shall be exempt from inspection only during the initial two registration [period] periods first following the date of the manufacturer's certificate of origin (MCO).

B. Vehicles, which are fueled by a mixture of gasoline and oil for purposes of lubrication, are exempt from inspection.

C. Motor vehicles that are used for legally sanctioned competition and not operated on public streets and highways.

D. Implements of husbandry, or road machinery not regularly operated on public streets and highways.

E. Other vehicles which are not regularly operated on public streets and highways after making a proper showing to demonstrate such to the program manager.

F. Diesel and electric powered vehicles. New diesel vehicles are exempt until title transfer. [will be exempted after passing an EPA Method 9 opacity test

~~at VPMD Program Headquarters.] Diesel vehicles must [be re-tested] pass a visible emissions test at VPMD Program Headquarters prior to registration following a title transfer.~~

G. Vehicles leased by a leasing company whose place of business is Bernalillo county, to a person who resides outside of Bernalillo county. However an exemption shall not be granted if the person resides in an area, which has an EPA-required vehicle inspection program.

H. Vehicles manufactured during or before model year 1974.

I. Vehicles sold between licensed dealers.

J. Vehicles with a GVW ~~[of] of 10,001 lbs or more[which are defined as motor homes in the New Mexico Motor Vehicle Code and which are not used for business or driven on a regular basis. Motor homes will be exempted after passing NM 95 (BAR 90) or equivalent out of state test is presented to the VPMD. Motor homes must be re-tested prior to title transfer].~~

K. Dedicated alternative fueled vehicles classified as super ultra low emission vehicles.

L. Electric hybrid vehicles classified as super ultra low emission vehicles.

[5/20/88. . .11/13/91, 9/23/94, 12/1/95, 8/1/97; 20.11.100.23 NMAC - Rn, 20 NMAC 11.100.II.12, 10/1/02; A, 5/1/04]

20.11.100.25 SPECIFICATIONS FOR APPROVED VEGAS:

A. Performance and design specifications for the VEGAS: The program manager shall establish the specifications for the VEGAS, which shall be used exclusively by all stations, which have been certified by the program to perform emission inspections. The specifications shall be consistent with those required in 40 CFR Part 51 Appendix B subpart S and shall include, but are not limited to, operation by internal computer controlled logic, automatic data collection, service and maintenance requirements for replacement or loan analyzers and warranty for the period of an agreement with the station. The VEGAS shall be able to perform an on-board diagnostic test, a pressurized gas cap test, an idle mode test and an unloaded 2500 RPM test. The VEGAS shall provide second chance capabilities for ~~[both] the idle mode and 2500 RPM tests.~~ The specifications shall be described in a separate document and shall be made available by the program upon request. A list of vendors for the approved VEGAS will be available at VPMD Headquarters.

B. The program manager will establish specifications for the exhaust

gas analytical and sampling system portion of the approved VEGAS. The program manager will determine the manufacturers' compliance with the revisions and additions to the specifications necessary for use of the instrument within the program area.

C. Applications for approval of vehicle exhaust systems:

(1) Those manufacturers seeking to become a vendor of approved VEGAS shall make application to the program manager on forms provided by the program. Only manufacturers, which can offer an analyzer, which meets the requirements as specified by the program manager, shall be allowed to participate as a vendor.

(2) A manufacturer requesting the approval of an analyzer for the measurement of exhaust gases for use in the program shall make application with the program manager on forms provided by the Program. All manufacturers making application shall meet the applicable technical specifications and administrative requirements specified by the program manager prior to approval.

D. Working span gases:

(1) General: The VEGAS manufacturer and its designated marketing vendors shall, on request, supply span gases approved by the program to any ultimate purchaser of its unit. The VEGAS manufacturer shall also provide the analyzer purchaser with a comprehensive, up-to-date list with addresses and phone numbers of NIST approved gas blenders. Each new or used VEGAS sold or leased by the instrument manufacturer or marketing vendor shall have a full span gas container installed and operational at time of delivery if the VEGAS is designed to incorporate an integral span gas supply.

(2) Span gas blends: The span gas concentrations supplied with VEGAS used by certified *air care* stations shall conform to the specifications developed pursuant to this subsection.

E. VEGAS performance characteristics:

(1) Optical correction factor sometimes referred to as "C" factor or "propane to hexane conversion factor": Each approved VEGAS shall be permanently labeled with its correction factor, carried to at least two decimal places. Factor confirmation shall be made on each assembled VEGAS by measuring both N-hexane and propane on assembly line quality checks.

(2) Changes and equipment updates: No changes in design or performance characteristics of component specifications which may affect VEGAS performance will be allowed without the program manager's approval. It will be the VEGAS manufacturer's responsibility to confirm that such changes have no detrimental effect

on VEGAS performance. All approved VEGAS shall be updated as needed and specified in the specifications document.

F. Documentation, logistics and warranty requirements: An instruction manual shall accompany each VEGAS and shall contain at least the following:

- (1) complete technical description,
- (2) functional schematics (mechanical and electrical),
- (3) accessories and options,
- (4) model number, identification markings and location,
- (5) operating maintenance to include recommended periodic cycles and procedure for maintaining sample system integrity (leaks, hang-up, calibration, filters, etc.),
- (6) required service schedule, identifying the items needing maintenance and the procedures to be followed by the purchaser or lessor. The services to be performed only by the manufacturer shall be clearly identified,
- (7) warranty provisions to include listing of warranty repair stations by name, address, and phone number, and
- (8) the name, address, and phone number of the permanent southwestern regional representative(s) for training, service, and warranties.

G. Calibration of approved VEGAS: Certified *air care* stations and all others participating in this program shall abide by this subsection in the calibration and spanning of VEGAS. Span gases and containers shall meet the following parameters, blends and specifications:

(1) span and calibration gases: The operator of a certified *air care* station shall be responsible to assure that span gases used in approved VEGAS conform to the following:

(a) All span gases supplied to stations shall be named using EPA recommended naming practices.

(b) The carrier gas shall be nitrogen; the hydrocarbon gas shall be propane. Three component (HC, CO, CO₂ and carrier) gases will be provided.

(c) The concentration(s) of the span gas blend shall be within limits established by the program to provide for uniform VEGAS spanning.

(d) The accuracy of the certified *air care* station span gas blend shall be certified by the blender to be \pm (plus-or-minus) 2% of labeled concentration and traceable to the NIST. Only gas blends supplied by the program's approved blenders shall be used with the approved VEGAS.

(e) Certified *air care* stations shall gas calibrate the approved VEGAS once each 72 hours as determined by the

instrument or as needed in order to maintain accuracy.

(f) All approved VEGAS shall be calibrated only with span gases bearing a program approved label.

(2) **Accuracy:** A gas supplier shall initially demonstrate to the program its qualifications as a vendor of span gases. The program may require additional evidence of qualifications at periodic intervals. All gas suppliers will be required to abide by the "approved span gas verification program" established by the VPMP.

(3) **Containers:** Span gases shall be supplied in containers which meet all the applicable provisions of the occupational safety and health administration (OSHA).

(4) **Additional requirements:** Additional specifications related to calibration requirements are described in the VEGAS specifications document.

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.25 NMAC - Rn, 20 NMAC 11.100.II.14, 10/1/02; A, 5/1/04]

20.11.100.26 DISCIPLINARY ACTION, DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATIONS:

A. The program manager is authorized after reasonable investigation and showing of a violation of any provisions of this regulation to take disciplinary actions including monetary penalties and/or denial, suspension or revocation of certification to operate under the Program as a certified *air care* station, certified fleet *air care* station, certified *air care* inspector or certified *air care* technician. In deciding on an appropriate action, the program manager may consider: past violations on file against the charged party; previous actions which may have been taken by the program against the charged party; settlement or consent agreements which document past violations; and judicial decisions if related to the requirements of this part, to the procedures manual, or other program guidelines or requirements.

B. Notwithstanding the provisions of Subsection C of 20.11.100.26 NMAC, the program manager may immediately suspend or revoke the certification of a certified *air care* station, certified fleet *air care* station, certified *air care* inspector or certified *air care* technician if the program manager determines that continued operation as an *air care* station, fleet *air care* station, *air care* inspector or *air care* technician would jeopardize the public health, safety and welfare; violate the VPMP procedures manual or this part; or compromise the program.

C. Prior to taking any action to suspend or revoke a certification, the program manager shall inform the inspector, technician or station owner of the

charges. Any party so informed may request a hearing on the merits before the program manager. Such request must be made in writing to the program manager within ~~[fifteen]~~ 15 consecutive days of receipt of the notice of intent to suspend or revoke the certification.

D. Upon receipt of a written request for a hearing on the merits, the program manager shall set a date, time and place for the hearing no more than 60 ~~[sixty days]~~ from the date of receipt of the request. No fewer than ~~[fifteen]~~ 15 consecutive days before the hearing, the program manager shall inform the charged party of the date, time and place of the hearing. The program manager may appoint a hearing officer. At the hearing, the charged party may demonstrate why a monetary penalty should not be imposed and/or the certification should not be suspended or revoked.

E. At the hearing on the merits, based on the findings of the initial investigation and the evidence presented at the hearing, the program manager, with the approval of the environmental health department director, may take appropriate action including but not limited to any one or a combination of the following: monetary penalty; suspension or revocation of the certification; or dismissal of the charges. The program manager may issue monetary penalties as authorized by the City of Albuquerque and the Bernalillo County Joint Air Quality Control Board Ordinances, the City of Albuquerque and Bernalillo County Motor Vehicle Emissions Control Ordinances, and the New Mexico Air Quality Control Act. The program manager may consider: past violations on file against the charged party; previous actions which may have been taken by the program against the charged party; settlement or consent agreements which document past violations; and judicial decisions if related to the requirements of this part, to the procedures manual, or other program guidelines or requirements.

F. Any party whose application for certification is denied or certificate is suspended or revoked may appeal the decision of the program manager to the board. To perfect the appeal to the board, the appellant must deliver a written request to the headquarters within ~~[fifteen]~~ 15 consecutive days after receipt of the program manager's decision. The program shall inform the board at the next regular meeting of the board. The board may make its determination based on the record or may require a hearing de novo. The board may uphold, overturn or amend the program manager's decision. If the board decides to conduct a hearing de novo, the board may appoint a hearing officer, and the board shall set a date, time and place for the hearing and

shall hold the hearing within ~~[ninety]~~ 90 days of the headquarters' receipt of the written request. No fewer than ~~[fifteen]~~ 15 consecutive days before the hearing, the board shall inform the appellant of the date, time and place of the hearing. The decision of the board shall be final.

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.26 NMAC - Rn, 20 NMAC 11.100.II.15, 10/1/02; A, 5/1/04]

NEW MEXICO INFORMATION TECHNOLOGY COMMISSION

This is an amendment to 1.12.5 NMAC, Sections 2, 3, and 6. Section 15 is new and added and the part name of 1.12.5 NMAC has been changed, effective 4-15-04.

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 12 INFORMATION TECHNOLOGY PART 5 OVERSIGHT OF PROJECT AND PROGRAM MANAGEMENT AND CERTIFICATION

1.12.5.2 **SCOPE.** This rule applies to the oversight and certification of all information technology projects or programs undertaken by executive agencies. [1.12.5.2 NMAC-N, 9-14-00; A, 4-15-04]

1.12.5.3 **STATUTORY AUTHORITY.** NMSA 1978 Sections 15-1C-5 and 15-1C-8. [1.12.5.3 NMAC-N, 9-14-00; A, 4-15-04]

1.12.5.6 **OBJECTIVE.** The purpose of this rule is to set forth executive agency IT project management oversight and certification responsibilities. [1.12.5.5 NMAC-N, 9-14-00; A, 4-15-04]

1.12.5.15 PROJECT CERTIFICATION.

A. Certification Committee. There is hereby created a sub-committee of the project oversight committee, entitled the certification committee. The certification committee shall have the authority to certify projects required by this section. The certification committee shall develop procedural requirements on how to certify or recertify projects, including documentation requirements, meeting specifics, timelines and support services. The committee shall convene at the call of a co-chair, but at least monthly to consider agency projects for certification.

B. Membership. The cer-

tification committee shall consist of the state CIO or the CIO's designee as co-chair and a member of the commission as co-chair of the certification committee; one member representing the legislative finance committee; one member representing the department of finance and administration; and two state agency CIO's. The state CIO shall appoint the two agency CIO's.

C. Projects requiring certification include:

(1) Projects totaling \$1million or more in cost over the life of the project.

(2) Projects determined to possess a substantial risk by the office.

D. Agencies shall prepare a written report of the status of projects included in their agency IT plan, but not requiring certification or project management oversight per 1.12.5.10 NMAC of this rule, to the office.

E. Certification Process:

(1) The certification committee shall verify the project is included in the requesting agency's *information technology plan*, and is consistent with *state architectural standards* and the *state's information technology strategic plan*.

(2) The certification committee may issue or deny project certification or may provide contingent certification subject to the agency providing specific information. The certification committee shall notify the agency submitting the project in writing of its decision. In the case of denial of the project for certification, the certification committee will cite the reasons for its decision and the recommended actions needed to be taken by the agency for resubmission of the project for certification.

(3) If at any time the certification committee cannot convene, the state CIO shall have the authority to issue or deny certification for a particular phase of the project. If the state CIO issues or denies certification without convening the committee, the state CIO shall provide a justification of the action taken at the next regularly scheduled meeting of the commission.

(4) At a minimum, project certification shall be required at a project's initiation, during its implementation and close-out. The certification committee may require additional certification phases, events or deliverables based on the progress, complexity, risk and/or size of the project. Project certification shall be required before funds can be released for any of the above certification phases.

(5) A report by the agency requesting approval of a project requiring certification must be submitted in writing for all certification phases specified by the certification committee. The committee shall determine the components of the reports and criteria for issuing certification.

F. Right to Appeal. If an agency requesting certification for any phase is denied certification, the agency can appeal the decision by submitting a written intent to appeal within five (5) days of the receipt of denial. The written intent to appeal shall be submitted to the chair of the process committee of the commission for administrative processing to the commission, with a courtesy copy provided to the co-chairs of the certification committee. It shall be the responsibility of the agency to comply with the commission agenda and meeting rules (see 1.12.2.10 NMAC) to present its appeal.

[1.12.5.15 NMAC - N, 4-15-04]

**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY
TRAINING AND RECRUITING
DIVISION**

Law Enforcement Academy

This is an amendment to 10.29.7 NMAC, Section 8, effective 4/15/2004.

10.29.7.8 [2002—2003] IN-SERVICE TRAINING CYCLE FOR LAW ENFORCEMENT OFFICERS

A. Twelve (12) hours of maintenance training/education may apply towards the 40-hour requirement. This is training/education which insures that previously learned knowledge, skills, and abilities of a critical nature are maintained at an acceptable level of proficiency. Firearms, first aid, defensive tactics, driving, and DWI measuring devices are examples of areas where periodic maintenance is measured and/or tested.

B. A minimum of twenty (20) hours are required of advanced and specialized training/education. This is training/education which is designed to improve upon or add to the knowledge, skills, and abilities of the law enforcement officer. Any accredited advanced, specialized, departmental in-service, college, or video training would qualify.

C. A minimum of eight (8) hours are required from one or any combination of the following subjects: cultural awareness, stress/anger management, domestic violence, critical incident response, ethics, legal update, and alternative force, first line supervision, mid-management, executive management, animal cruelty and Safe Pursuit Act.

D. Required training may be received through the following means.

(1) The advanced training bureau will contract for course instruction at the regional training sites.

(2) Where scheduling will allow,

the training and recruiting division will assign staff to instruct the course at the regional training sites.

(3) ~~The curriculum will be~~ Curriculum developed by the training and recruiting division ~~and will be~~ provided to individual agencies upon request for their own certified instructors to present to their officers, provided the instructor is qualified in the subject matter.

(4) The training and recruiting division will ~~produce~~ provide instructional video tapes which can be loaned to agencies. Agency instructors or facilitators will ~~facilitate~~ conduct the training using the same guidelines for other video training. Facilitator guidelines and exams ~~would~~ will accompany the video tape.

(5) Individual agencies develop curriculum for review and approval (accreditation) by the academy which meets the criteria established by the board.

E. This five-pronged approach gives all agencies the flexibility they need to address individual training needs. It also allows the board to implement a planned program of in-service training that is responsive to the changing demands placed upon law enforcement and the opportunity to have statewide consistency in certain critical areas.

F. Implementation is to begin on January 1, ~~[2002]~~ 2004. This two-year period consists of the twelve (12) hours of maintenance training required in Subsection A of 10.29.7.8 NMAC, the twenty (20) hours of advanced training required in Subsection B of 10.29.7.8 NMAC, and the eight (8) hours of training required in Subsection C of 10.29.7.8 NMAC.

G. Officers obtaining certification between January 1, ~~[2002]~~ 2004 and December 31, ~~[2002]~~ 2004, will be required to obtain one-half of the in-service training requirement. Officers obtaining certification between January 1, ~~[2003]~~ 2005, and December 31, ~~[2003]~~ 2006, will be required to meet the next two-year requirement which will go into effect on January 1, ~~[2004]~~ 2006. This policy will apply in subsequent two-year cycles. Officers transferring from one agency to another will carry with them the responsibility for in-service training.

[1-30-93, 12-15-93, 1-17-94, 12-7-95, 10-1-97, 1-1-98, 1-1-2000; 10.29.7.8 NMAC - Rn, 10 NMAC 29.7.8, 7/1/01; A, 1/1/02; A, 6/14/02; A, 01/01/04; A, 04/15/04]

**NEW MEXICO
SECRETARY OF STATE**

**TITLE 1 GENERAL GOV-
ERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND
ELECTED OFFICIALS
PART 24 R E F E R E N D U M
PETITION PROCEDURES**

1.10.24.1 ISSUING AGENCY:
Office of the Secretary of State
[1.10.24.1 NMAC - N, 04-15-2004]

1.10.24.2 SCOPE: This rule
applies to any referendum filed with the
office of the secretary of state pursuant to
Article IV, Section 1 of the Constitution of
New Mexico and pursuant to the provisions
of Section 1-17-1 through 1-17-14, NMSA
1978.
[1.10.24.2 NMAC - N, 04-15-2004]

**1.10.24.3 S T A T U T O R Y
AUTHORITY:** Election Code, Section 1-
2-1 A (2), NMSA 1978. The issuing author-
ity shall adopt rules and regulations to carry
out the provisions of the Election Code.
[1.10.24.3 NMAC - N, 04-15-2004]

1.10.24.4 D U R A T I O N :
Permanent
[1.10.24.4 NMAC - N, 04-15-2004]

1.10.24.5 EFFECTIVE DATE:
April 15, 2004 unless a later date is cited at
the end of a section.
[1.10.24.5 NMAC - N, 04-15-2004]

1.10.24.6 OBJECTIVE: The
objective of this rule is to establish adminis-
trative procedures for the review of signa-
tures for referendum petitions.
[1.10.24.6 NMAC - N, 04-15-2004]

1.10.24.7 DEFINITIONS:
A. "Certified list" means
the alphabetized listing of registered voters
of a county that is under the signature and
seal of the county clerk.
B. "Designated agent"
means the sole individual authorized by the
referendum sponsors to act on behalf of
sponsors.
**C. "Fictitious, forged or
otherwise clouded signatures"** means sig-
natures including, but not limited to, the
names of celebrities and actors that are not
registered voters or qualified electors of
New Mexico, cartoon characters, historical
figures, animal companions or livestock, or
any signature where the address is not leg-
ible and the signer could not be sufficiently
identified by a judge.
D. "Petition" means the

referendum form, approved and circulated
pursuant to Article 17 of the Election Code.

E. "Petitioner" means an
individual, group of persons or organization
circulating a referendum petition pursuant
to Article IV, Section 1 of the New Mexico
Constitution and the provisions of Article
17 of the Election Code.

F. "Qualified elector"
means any person qualified to vote under
the provisions of the Constitution of New
Mexico and the Constitution of the United
States.

G. "Registered voter"
means a qualified elector, registered to vote
pursuant to the provisions of the Election
Code.

H. "Signer" means a qual-
ified elector or registered voter who signs
his name to a referendum petition.

I. "Solicitor" means a
person who circulates a referendum petition
and requests the signatures of qualified
electors or registered voters.

J. "Sponsor" means the
individual, group of persons or organization
circulating a referendum petition pursuant
to Article IV, Section 1 of the New Mexico
Constitution and the provisions of Article
17 of the Election Code.
[1.10.24.7 NMAC - N, 04-15-2004]

1.10.24.8 PETITION FILING:

A. Only the designated
agent shall file the petition on behalf of the
sponsors.

B. A referendum petition
filed pursuant to Section 1-17-10 NMSA
1978, shall not be withdrawn nor added to
at the time of initial filing, but may be later
amended subject to the provisions of
Section 1-17-12, NMSA 1978.

C. At the time of filing, the
designated agent shall submit a certified list
or the registered voters of each county rep-
resented in the petition. The certified list
shall be in both electronic media and paper.

D. If a signer of a referen-
dum petition is a qualified elector, but not a
registered voter pursuant to the provisions
of the Election Code (NMSA 1-1-1 through
1-24-4, NMSA 1978) the designated agent
shall submit documentation that the signer
is eighteen (18) years of age and a resident
of the county listed above the signature of
the signer. Acceptable documentation con-
sists of a government issued verification of
the age of the signer and other documents
that indicate county of residence.

E. The secretary of state
shall determine the acceptability of any doc-
uments submitted.
[1.10.24.8 NMAC - N, 04-15-2004]

**1.10.24.9 PETITION VERIFI-
CATION:**

A. The secretary of state
shall examine each page of the petition to
determine the validity of signatures consis-
tent with the requirements of Article 17 of
the Election Code.

B. Fictitious, forged or
otherwise clouded signatures shall be delet-
ed from the petition consistent with Section
1-17-11, NMSA 1978.
[1.10.24.9 NMAC - N, 04-15-2004]

History of 1.10.24 NMAC: [RESERVED]

**NEW MEXICO
SECRETARY OF STATE**

**This is an amendment to 1.10.22 NMAC,
Section 9, effective 4-15-2004.**

**1.10.22.9 COUNTY CLERK
PROCEDURES:**

A. The provisional ballot
outer envelope containing the voter's oath
shall not be opened until the county clerk
has determined the reason the provisional
voter's name was not on the signature ro-
ster, or whether the voter has provided iden-
tification, if required, by the Election Code.

B. The determination of
the provisional voter's status and whether
the ballot shall be counted, along with the
research done by the county clerk shall be
noted on the provisional ballot outer enve-
lope. The county clerk shall, after status
determination, separate qualified ballots
from unqualified ballots. Unqualified bal-
lots shall not be opened and shall be
deposited in an envelope marked "unquali-
fied provisional ballots" and retained for
twenty-two (22) months, pursuant to 42
USC 1974. The outer provisional ballot
envelope for qualified provisional ballots
shall be opened and deposited in an enve-
lope marked "qualified provisional ballot
outer envelopes" and retained for twenty-
two (22) months, pursuant to 42 USC 1974.
The county clerk shall mark the number of
the voter's correct precinct on the inner
secrecy envelope, but no other information
indicating the identity of the voter shall be
furnished to the county canvassing board.
After the tally of qualified provisional bal-
lots, the county clerk shall deposit the
counted provisional ballots in an envelope
marked "counted provisional ballots" and
retained for a twenty-two (22) months pur-
suant to 42 USC 1972.

C. The county canvassing
board shall direct the county clerk ~~shall~~ to
prepare a tally of qualified provisional bal-
lots and include them in the canvass pre-
sented to the county canvassing board. The
tally sheet may be a photocopy of a precinct
tally sheet, however it shall be clearly
marked as designated for provisional ballot
tally. Upon the conclusion of the county

canvass, the county clerk shall transmit the provisional ballot tally to the office of the secretary of state. The county clerk shall also prepare a report, on behalf of the county canvassing board, on the disposition of all provisional ballots cast within the county. The report shall contain the name, address, date of birth and social security number of each provisional voter. The report shall include an explanation why a provisional voter's name was not included on the signature roster and the reason why any provisional voter's ballot was not counted.

D. The county clerk may designate emergency paper ballots for use as provisional ballots.

[1.10.22.9 NMAC - N, 8-15-2003; A, 4-15-04]

NEW MEXICO WATER TRUST BOARD

This is an amendment to 19.25.10 NMAC. Sections 6, 7, 8, 9, 11, 13, 14, 15, and 16 are amended, effective April 15, 2004.

19.25.10.6 OBJECTIVES:

A. The New Mexico Water Trust Board is required to adopt rules governing terms and conditions of grants and loans recommended by the board for appropriation by the State Legislature from the water project fund pursuant to Section 72-4A-5, NMSA 1978. Section 72-4A-9, NMSA 1978, creates the "water project fund" within the New Mexico Finance Authority and authorizes the authority to establish procedures and rules as required to administer the water project fund. The authority may adopt separate procedures and rules for administration of the water project fund and to recover from the water project fund costs of administering the water project fund and originating financial assistance.

B. Section 72-4A-5, NMSA 1978, provides that the board shall give priority to qualifying water projects that (i) ~~have urgent needs;~~ (ii) have been identified ~~for implementation~~ as being urgent to meet the needs of a regional water planning area that has had ~~of~~ a completed regional water plan ~~that is~~ accepted by the interstate stream commission; ~~and (iii)~~ (ii) have matching contributions from federal or local funding sources available and (iii) have obtained all requisite state and federal permits and authorizations necessary to initiate the qualifying water project. The purpose of these rules is to set forth the intent of the board and to outline, in general terms, the criteria and procedures to be used in evaluating and funding qualifying water

projects.

[19.25.10.6 NMAC - N, 09/16/02; A, 04/15/04]

19.25.10.7 DEFINITIONS:

A. "act" means the Water Project Finance Act, Sections 72-4A-1 through 72-4A-10, NMSA 1978, as the same may be amended and supplemented.

B. "agreement" means the document or documents signed by the board and a ~~qualified~~ qualifying entity which specify the terms and conditions of obtaining financial assistance from the water project fund.

C. "applicant" means a ~~qualified~~ qualifying entity which has filed a water project proposal with the authority for initial review and referral to the project committee.

D. "authority" means the New Mexico Finance Authority.

E. "authorized representative" means one or more individuals duly authorized to act on behalf of the ~~qualified~~ qualifying entity in connection with its financial application, water project proposal or agreement.

F. "board" means the New Mexico Water Trust Board created by the act.

G. "bylaws" means the bylaws of the board adopted on September 25, 2001, as amended and supplemented.

H. "financial application" means a written document filed with the authority by an applicant for the purpose of evaluating the applicant's qualifications for types of financial assistance which may be provided by the board.

I. "financial assistance" means loans, grants and any other type of assistance authorized by the act, or a combination thereof, provided from the water project fund to a qualified entity for the financing of a qualifying water project.

J. "political subdivision" means a municipality, county, irrigation district, conservancy district, special district, ~~acequia or acequia~~, soil and water conservation district, water and sanitation district or an association organized and existing pursuant to the Sanitary Projects Act (Sections 3-29-1 through 3-29-19 NMSA 1978, as amended and supplemented) or any combination thereof operating pursuant to a joint powers agreement.

K. "~~qualified~~ qualifying entity" means ~~a political subdivision or~~ a state agency, a political subdivision of the state or a recognized Indian nation, tribe or pueblo, the boundaries of which are located wholly or partially in New Mexico.

L. "qualifying water project" means a water project serving an area wholly within the boundaries of the

state for (i) storage, conveyance or delivery of water to end users; (ii) implementation of federal Endangered Species Act of 1973 collaborative programs; (iii) restoration and management of watersheds; ~~or~~ (iv) flood prevention; or (v) conservation, recycling, treatment or reuse of water as provided by law and which has been recommended by the board for funding by the state legislature and which has been approved by the state legislature pursuant to Section 72-4A-9(B), NMSA 1978.

M. "state" means the State of New Mexico.

N. "state agency" means any agency or institution of the state.

O. "water project account" means a fund designated by a ~~qualified~~ qualifying entity exclusively for receipt of financial assistance.

P. "water project fund" means the fund of that name created in the authority by Section 72-4A-9, NMSA 1978.

Q. "water project proposal" means a written proposal submitted by a ~~qualified~~ qualifying entity for review by the project review committee.

R. "water project review committee" means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review water projects to be recommended for funding from the water project fund.

S. "water trust fund" means the fund of that name created in the state treasury by Section 72-4A-8, NMSA 1978.

[19.25.10.7 NMAC - N, 09/16/0; A, 04/15/04]

19.25.10.8 ELIGIBILITY: PRIORITIZATION OF WATER PROJECTS:

The board will develop and consider a variety of factors in reviewing and evaluating water project proposals to determine which water projects to recommend as qualifying water projects for appropriation by the state legislature. In addition to other factors deemed relevant by the board, those factors will include the items described in this Section 19.25.10.8 NMAC.

A. Regional Dispersion. The board will consider the location of the water project in the State of New Mexico and will attempt to ensure that qualifying water projects are dispersed throughout the state to the benefit of all citizens of the state.

B. Local Effort. The amount of local financial, in-kind-contribution, political and infrastructure support and resources given to the water project will be evaluated by the board. Water projects must demonstrate significant local support, especially in the area of committed financial resources and in-kind-contributions (includ-

ing contributions by individual property owners as well as public contributions) to meet local cost share requirements. When evaluating local support, the board will consider and evaluate the support and available resources of the local entities affected by the proposed water project when the proposed water project is located in or overlaps more than one jurisdiction.

C. Ability to Pay. A water project that benefits or is suggested by a ~~[qualified]~~ qualifying entity that has ability to pay will be expected to receive a loan instead of a grant in order to maximize the number of qualifying water projects that can be funded from the limited financial resources expected to be available in the water project fund. Water projects that do not benefit a definitive group or entity or that are suggested by a ~~[qualified]~~ qualifying entity without the ability to repay a loan may receive a grant instead of a loan. The ability to pay will be evaluated by the authority in accordance with the financial application submitted by the ~~[qualified]~~ qualifying entity.

D. Ability to Leverage Federal Funds. The board will analyze the amount of federal funding committed or likely to be committed for construction and completion of the water project. If federal funding is not anticipated to be available within 3 years of the estimated start date of the water project, no consideration will be given to federal funding for the particular water project.

E. Priority. [Projects] Water projects which:

(1) ~~[have urgent needs]~~ have been identified as being urgent to meet the needs of a regional water planning area that has had a completed regional water plan accepted by the interstate stream commission;

(2) ~~[have been identified for implementation of a completed regional water plan that is accepted by the interstate stream commission.]~~ have matching contributions from federal or local funding sources available; and

(3) ~~[have matching contributions from federal or local funding sources may]~~ have obtained all requisite state and federal permits and authorizations necessary to initiate the water project shall be given priority by the board.

F. Scientific, Hydrologic and Biological Studies. Water projects must be backed by sound and established scientific, hydrologic and biological studies prepared by registered engineers, hydrologists, biologists or other consultants acceptable to the board which demonstrate that the water project will accomplish its planned objectives.

G. Comprehensive Solution/Measurable Outcome. The

planned objective of a water project must be comprehensive in scope, address all of the component parts necessary to accomplish its planned objective and lead to measurable outcomes.

H. Immediate Threats to Public Health, Safety and Welfare. Water projects required to eliminate an immediate threat to public health, safety and welfare may be given priority consideration by the board; however, the board expects most qualifying water projects will address long term water uses and needs.

I. Readiness to Proceed. An applicant should demonstrate that adequate planning, engineering, evaluation and study have been or are scheduled to be completed for the water project to allow construction or implementation to begin upon receipt of financial assistance.

J. Cost-Effectiveness of Water Project. An applicant should demonstrate that the water project is the most cost-effective method of accomplishing its planned objective. The board expects that alternative methods and cost analysis of accomplishing the planned objective will be explored by an applicant prior to submitting a water project to the board. A summary of the alternatives will be reviewed by the board and the board may consult independent advisors regarding alternative methods of accomplishing the planned objectives of a water project.

K. Life of Water Project. The planned objective of a water project should provide a solution to the need for the predicted life of the water project. Projections and forecasts supporting the adequacy of a storage, delivery or conveyance project to address the water needs for 40 years should be provided by the applicant. Water projects addressing other objectives should be supported by projections and forecasts demonstrating the expected life of the water project.

L. Urgent [Needs]. Water projects intended to address problems that are expected to become severe within five (5) years of the date of application shall be considered ~~[as addressing urgent needs as described in]~~ urgent under the act.

M. Water Rights. An applicant proposing a storage, delivery or conveyance water project must demonstrate that adequate water rights are or will be owned or controlled to allow the water project to accomplish its planned objectives.

[19.25.10.8 NMAC - N, 09/16/02; A, 04/15/04]

19.25.10.9 WATER PROJECT PROPOSAL, PROCEDURES AND APPROVAL PROCESS:

A. The board and the authority will administer an outreach pro-

gram to notify ~~[qualified]~~ qualifying entities that water project proposals are being accepted to identify water projects for review by the water project review committee and the board for recommendation for funding to the state legislature as qualifying water projects.

B. The authority will provide forms and/or guidelines for water project proposals and financial applications. A water project proposal and financial application must include the following:

(1) information required to allow the board to give the water project a priority ranking pursuant to Section 19.25.10.8 of these Rules;

(2) type of financial assistance being sought and itemization of the proposed uses of the financial assistance;

(3) detailed description of the water project to be evaluated, which information must include:

(a) description of the scope of work of the water project;

(b) estimated cost of the water project;

(c) target date for the initiation of the water project and the estimated time to completion;

(d) estimated cost/benefit analysis for the water project;

(e) estimated life of the water project;

(f) the availability of performance bonds and insurance for the water project; and

(g) other financial and technical data as requested by the authority or the board;

(4) letter certifying that the water project was duly approved by the applicant's governing body;

(5) identification of the source of funds for repayment of the financial assistance and the source of funds to operate and maintain the water project over its useful life;

(6) requested type of financial assistance, *i.e.*, loan or grant; and

(7) additional information as requested by the authority or the board.

C. The authority staff will forward all completed water project proposals to the water project review committee. The water project review committee will consider the water project and may confer with outside parties, including any local interdisciplinary teams familiar with the water project, as necessary to obtain more information on the feasibility, merit, and cost of the water project. The water project review committee will make a written recommendation to the board on each water project proposal. Such recommendation will include approval or disapproval of specific water project proposals as qualifying

water projects.

D. Once a recommendation has been made on the water project proposal by the water project review committee, the board will act on the water project proposal no later than the next regular board meeting at which such item may be properly considered. The board may approve all or part of the water project proposal as recommended by the water project review committee.

E. Commencing in 2003, a ~~qualified~~ qualifying entity shall submit its water project proposal and financial application to the authority no later than first day of June of any year for review if the water project is to be considered at the next regular legislative session. After completion of the review process and approval of the water project proposal by the water project review committee and the board and receipt of a favorable recommendation on the water project proposal, the water project will be recommended by the board for approval by the state legislature at the next regular session of the state legislature, which recommendation and approval are required by Sections 72-4A-5 and 72-4A-9, NMSA 1978. Water projects ~~intended to address urgent needs~~ entitled to priority under 19.25.10.8 (E) NMAC may be submitted after the first day of June of any year and may still be considered at the next regular legislative session.

[19.25.10.9 NMAC - N, 09/16/02; A, 04/15/04]

19.25.10.11 QUALIFYING WATER PROJECTS AND ELIGIBLE COSTS:

A. The board and the authority may provide financial assistance from the water project fund to ~~qualified~~ qualifying entities only for qualifying water projects. As provided by Section 72-4A-7, NMSA 1978, eligible items which may be financed from the water project fund include:

- (1) matching requirements for federal and local cost shares;
 - (2) engineering feasibility reports;
 - (3) contracted engineering design;
 - (4) inspection of construction;
 - (5) special engineering services;
 - (6) environmental or archeological surveys;
 - (7) construction;
 - (8) land acquisition;
 - (9) easements and rights of way;
- and
- (10) legal costs and fiscal agent fees.

B. A qualified entity which has had financial assistance approved

by the state legislature for financing a qualifying water project may apply to the board to redirect the financial assistance to a different water project made necessary by unanticipated events. The decision to redirect the financial assistance to a different qualifying water project will be at the sole discretion of the board and subject to approval of the state legislature as required by Section 72-4A-9(B), NMSA 1978.

[19.25.10.11 NMAC - N, 09/16/02; A, 04/15/04]

19.25.10.13 FINANCING APPROVAL REQUIREMENTS: Based on the priority and evaluation factors set forth in Sections 19.25.10.8 and 19.25.10.10, the board may recommend approval of the qualifying water project and financial assistance to the applicant provided the following requirements are satisfied:

A. In approving an application for financial assistance, the board shall find that the qualifying water project is important to the overall needs of the state and its citizens.

B. In determining the qualification for financial assistance, the board shall consider the ability of a ~~qualified~~ qualifying entity to secure financing from other sources and the costs of the financial assistance.

C. In approving a grant application, the board shall first consider if the applicant has the ability to repay a loan.

D. In approving a loan application, the board must find that the useful life of the qualifying water project will meet or exceed the maturity of the loan made.

F. In approving a loan application, the board must find that the applicant has the financial capability to ensure that sufficient revenues will be available to operate and maintain the qualifying water project for its useful life and to repay the loan.

G. To be eligible for financial assistance, the applicant must agree to properly maintain separate project accounts and financial records in accordance with generally accepted accounting principles during the construction or implementation of the qualifying water project and, in the case of a loan, to conduct an annual audit of the qualifying water project's financial records during its useful life.

H. In order to receive financial assistance, the ~~applicant~~ qualifying entity must provide title insurance with respect to the qualifying water project or a written assurance, signed by an attorney, that the ~~qualified~~ qualifying entity has or will acquire proper title, easements and rights-of-way to the property upon or through which the qualifying water project

is to be constructed or extended.

I. Any contract or sub-contract executed for the completion of any qualifying water project shall contain a provision that there shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin.

J. In order to receive financial assistance, the applicant must require any contractor providing construction services for a qualifying water project to post a performance and payment bond in accordance with the requirements of Section 13-4-18, NMSA 1978.

K. In order to receive financial assistance, the ~~qualified~~ qualifying entity must agree to operate and maintain a qualifying water project addressing storage, conveyance and delivery needs so that it will function properly over the structural and material design life, which shall not be less than 20 years.

L. In order to receive financial assistance, the ~~qualified~~ qualifying entity must agree to pay the costs of originating grants and loans from the proceeds of the grant or loan or from other legally available moneys of the ~~qualified~~ qualifying entity.

M. In order to receive financial assistance, the ~~qualified~~ qualifying entity must agree to provide plans and specifications for the qualifying water project to the ~~board~~ authority for approval after review and upon the recommendation of the state engineer and department of environment, before any financial assistance disbursements to pay for construction costs are made for the qualifying water project. Plans and specifications for a qualifying water project shall incorporate available technologies and operational design for water use efficiency.

N. In addition to the foregoing, a ~~qualified~~ qualifying entity must satisfy any other requirements as may be determined by the board.

[19.25.10.13 NMAC - N, 09/16/02; A, 04/15/04]

19.25.10.14 APPEALS. Any applicant or ~~qualified~~ qualifying entity may appeal a decision of the board by notifying the board in writing within forty-five days of the date on which notice of an adverse decision is given by the board to an applicant. Notice is deemed to be given on the fifth business day following the date on which written notice is mailed to the applicant by the board by U.S. mail. Appeals not timely or properly made will be barred thereafter. The chairman of the board will promptly review each timely appeal and will recommend, at the next regular meeting

of the board, action to be taken by the board on the appeal. The board will review and take action on the appeal and will notify the applicant or ~~[qualified]~~ qualifying entity of the board's decision, in writing, within five working days of the board's decision. The decision of the board is final.

[19.25.10.14 NMAC - N, 09/16/02; A, 04/15/04]

19.25.10.15 FINANCIAL ASSISTANCE AGREEMENT:

A. The board and the ~~[qualified]~~ qualifying entity will enter into an agreement to establish the terms and conditions of financial assistance from the board. The agreement will include the terms of repayment and remedies available to the board in the event of a default. The board, or the authority, on behalf of the board, will monitor terms of the agreement and enforce or cause to be enforced all terms and conditions thereof, including prompt notice and collection.

B. The interest rate on any financial assistance extended shall be determined by the authority based on the cost of funds and ability of a ~~[qualified]~~ qualifying entity to repay a loan. The interest rate shall not change during the term of the financial assistance unless refinanced or unless the financial assistance is structured as a variable rate obligation.

C. The agreement will contain provisions which require financial assistance recipients to comply with all applicable federal, state and local laws and regulations.

D. In the event of default under a financial assistance agreement by a ~~[qualified]~~ qualifying entity, the board, or the authority, on behalf of the board, may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

[19.25.10.15 NMAC - N, 09/16/02; A, 04/15/04]

19.25.10.16 ADMINISTRATIVE FEES:

A. The board may impose and collect a reasonable fee in connection with the filing of a water project proposal or a financial application for approval of a water project and for financial assistance with the board and the authority. The board also may impose and collect an administrative fee from each ~~[qualified]~~ qualifying entity that receives financial assistance from the water project fund. If an administrative fee is assessed, the administrative fee will be a percentage of the principal amount of the financial assistance provided to a ~~[qualified]~~ qualifying entity. The administrative fee may be withheld from the principal amount of the financial assistance and will

be retained in the water project fund. Alternatively, the board may levy an annual fee equal to a percentage of the outstanding principal amount of a loan. Specific percentages will be based on, among other things, the volume of financial assistance being provided to ~~[qualified]~~ qualifying entities, the administrative costs of the board and the authority, and the availability of other revenue sources to cover the board's and the authority's administrative costs. The filing and administrative fee or fees may be used for, among other purposes, reimbursing the board or the authority for all or part of the costs of issuing bonds and other administrative costs, including any audits of the water project fund and the water trust fund.

B. The board and the authority may establish such other charges, premiums, fees and penalties deemed necessary for the administration of the water project fund and the water trust fund.

[19.25.10.16 NMAC - N, 09/16/02; A, 04/15/04]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

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Issue Number 23	December 1	December 14
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