

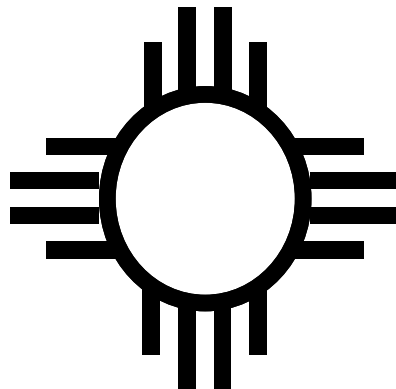
**NEW
MEXICO
REGISTER**



Volume XVIII
Issue Number 6
March 30, 2007

New Mexico Register

**Volume XVIII, Issue Number 6
March 30, 2007**



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

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Administrative Law Division
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2007

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New Mexico Register

Volume XVIII, Number 6

March 30, 2007

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A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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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 9, 2007, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers (City Council/County Commission Chambers) of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102.

The purpose of the hearing is to receive testimony and exhibits regarding the proposal to repeal 20.11.44 NMAC, Emissions Trading For Emissions Subject to a Maintenance Plan and 20.11.45 NMAC, Stationary Source Conformity.

20.11.45 NMAC was adopted by the Air Board on February 13th, 2002, and became locally effective on July 1, 2002. The purpose of this regulation was to allocate pollution emissions to a source in a manner consistent with the Carbon Monoxide Maintenance Plan for Albuquerque and Bernalillo County, New Mexico and any future maintenance plans for other criteria pollutants. The Carbon Monoxide Maintenance Plan that was approved by the U.S. Environmental Protection Agency (EPA) on May 24, 2000 established carbon monoxide (CO) budgets for highway mobile sources, off-road mobile sources, area sources, and major stationary sources. 20.11.45 NMAC established procedures and criteria for issuing new and modified air quality permits so that stationary source emissions would conform to the air pollution budgets. In other words, 20.11.45 NMAC created a mechanism for Albuquerque Air Quality Division (AQD) staff to manage the maintenance plan tons established for stationary sources. Emission offsets could be used by sources as a means to stay within the maintenance plan tons established in the budget for stationary sources.

However, the only pollutant currently subject to a maintenance plan in Bernalillo County is CO, and Bernalillo County is currently designated as an attainment area for CO under a limited maintenance plan

(LMP).

20.11.44 NMAC was adopted by the Air Board on May 8, 2002 and became effective locally on July 1, 2002. 20.11.44 NMAC established: an emission offset credit bank database for tracking of offsets; creation of emission offset credits by re-permitting to document emission reductions; inclusion of emission offset in public notice of permitting action if required; criteria for approval of offset trades; mechanism for tracking creation and use of emission offsets; mechanism for issuance of emission offset credit certificates.

20.11.44 NMAC was amended to address emissions trading for emissions subject to a maintenance plan in response to concerns raised during the adoption of 20.11.45 NMAC. But the only pollutant that is currently regulated by a maintenance plan is CO. Since the adoption of the CO maintenance plan in 1996, CO levels have dropped precipitously and are no longer a major concern in Bernalillo County. This decline in CO levels prompted a SIP revision involving the shift from a Maintenance Plan to a Limited Maintenance Plan (LMP), which was approved by EPA on 7/21/05, and which became effective on 8/22/05. "Under a LMP, however, budgets are no longer required. A cap on total emissions is not needed; therefore, neither a baseline level nor emissions estimates by category are needed for budget purposes". In addition to there being no CO budgets, there is no foreseeable reason that CO emissions would increase enough to require emissions offsets or trading. Therefore, no CO trading regulation is necessary.

Both 20.11.44 NMAC and 20.11.45 NMAC were transmitted to the EPA Region VI Regional Administrator by the Governor of New Mexico in May of 2003. After a preliminary review of these proposed regulations by EPA, Region VI, in the fall of 2005, it became apparent that these proposed regulations were not approvable as written, and EPA recommended that AQD withdraw them from consideration for inclusion into the New Mexico State Implementation Plan for air quality (SIP). AQD concurred with this recommendation, and on December 15, 2005, the Director of the Environmental Health Department, Alfredo Santistevan, submitted a request to the Regional Administrator for EPA Region VI, Mr. Richard Greene, that the SIP submittals be withdrawn from consideration.

EPA recommended that 20.11.44 NMAC and 20.11.45 NMAC be withdrawn from

consideration for inclusion into the SIP because CO is not a pollutant of concern for Bernalillo County and their prior approval of the Carbon Monoxide Limited Maintenance Plan (LMP) attests to this fact. Their approval of the LMP found that, "an emissions budget for the area is not necessary; therefore, there is not a need for a cap on total emissions during the maintenance period. The establishment of the CO limited maintenance plan without an emissions budget negated the utility of an emissions trading program for CO in Bernalillo County". . .therefore, "EPA is unable to approve the emissions trading program and associated rules at NMAC 20.11.44 and 20.11. 45". . .and "requests that AEHD withdraw these revisions to the SIP".

The Air Board is the federally-delegated air authority for Albuquerque and Bernalillo County and has responsibility for overseeing compliance with the federal Clean Air Act within Bernalillo County.

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 (NOI) before 5:00pm on Wednesday, May 2, 2007 to: Attn: May Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW, in advance of the hearing. The NOI 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 5:00pm on May 2, 2007. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to nbutt@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed action to repeal these regulations at the Environmental Health Department

Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov 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 BOARD OF DENTAL HEALTH CARE

Legal Notice

Notice is hereby given that the New Mexico Board of Dental Health Care will convene a Rule Hearing to amend, replace and repeal:

Title 16, Chapter 5, Part 1 General Provisions; 16.5.4 Emergency Licensure Provisions; 16.5.5 Dentists Fees; 16.5.6 Dentist Licensure By Examination; 16.5.7 Dentists Temporary License; 16.5.8 Dentist Licensure by Credentials; 16.5.9 Non-Dentist Owners; 16.5.10 Dentist Continuing Education Requirements; 16.5.12 Dentist Retirement, Inactive and Reinstatement; 16.5.13 Dentists License Revocation for Non Renewal; 16.5.15 Dentists, Anesthesia Administration; 16.5.16 Dentist Disciplinary Procedures; 16.5.17 Dentists and Dental Hygienists, Collaborative Practice; 16.5.18 Dental Hygienist Fees; 16.5.19 Dental Hygienist Licensure By Examination; 16.5.20 Dental Hygienist Licensure by Credentials; 16.5.21 Dental Hygienist Temporary License; 16.5.23 Dental Hygienist Continuing Education Requirements; 16.5.25 DH Requirements Inactive & Reinstatement; 16.5.26 DH License Revocation for Non Renewal; 16.5.28 DH Local Anesthesia Certification; 16.5.29 Dental Hygienist Practice; 16.5.30 DH Disciplinary Proceedings; 16.5.32 Dental Assistants Fees; 16.5.33 Dental Assistants Requirements For Certification; 16.5.36 DA Continuing Education Requirements; 16.5.37 DA Certificate Revocation for Non Renewal; 16.5.40 Dental Assistants Disciplinary Proceedings

This Hearing will be held at the City/County Building, City Council Meeting Room, 5th and Marquette, 9th Floor - Room 9081, Albuquerque, NM, April 27, 2007, starting at 8:30 a.m.

Following the Rule Hearing the Dental

Hygienists Committee will convene a regular meeting. The New Mexico Board of Dental Health Care will convene a regular meeting following the Dental Hygienists Committee Meeting on April, 27, 2007.

Copies of the proposed rules are available on the Dental Board's Website: www.rld.state.nm.us/b&c/dental or by sending a request to the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or by phone (505) 476-4680.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by April 6, 2007 to allow time for distribution to the Board and Committee members. Individuals planning on testifying at the hearing must provide 14 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the committee and Board meeting may be closed to the public while the Board and Committee are in Executive Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board Administrator at least one week prior to the meeting.

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE AND ADMINISTRATIVE CENTER

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE & ADMINISTRATIVE CENTER

NOTICE OF MEETING AND PUBLIC HEARING ON AMENDMENT OF RULES

Tuesday April 10, 2007, 11:00 AM, Criminalistics Conference Room, Metropolitan Forensic Science Center, 5350 2nd Street NW, Albuquerque, NM 87107

To comment on, or for additional information including a copy of the agenda and proposed amendments, or if you have a disability and you require special assistance to participate in this meeting contact John Krebsbach, Chairperson at (505) 823-4630 by Monday April 9, 2007.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT FORESTRY DIVISION

NOTICE OF PUBLIC HEARING on Amendments to the Commercial Timber Harvesting Requirements April 23, 2007 and April 30, 2007

The Energy, Minerals and Natural Resources Department (EMNRD) will hold public hearings at **6 P.M. on Monday, April 23, 2007** at the EMNRD, Forestry Division, Socorro District Office, 1701 Enterprise, Socorro, NM 87801 and **6 P.M. on Monday, April 30, 2007** in the Wendell Chino Building, Porter Hall, 1220 South St. Francis Blvd, Santa Fe, NM 87505.

EMNRD will conduct hearings on proposed amendments to the commercial timber harvesting requirements contained in 19.20.4 NMAC pursuant to NMSA 1978, Sections 9-5-1 and Section 68-2-1 *et seq.* The amendments would add additional species to the commercial forest species list including piñon, juniper, and oak; and exempt fuels mitigation activities conducted with EMNRD pursuant to a contract or a landowner assistance program from the harvest permit requirement. The amendments also add provisions that address removal of trees from the road corridor prior to road construction, trash and litter from harvest activities, spills from harvest equipment, woody debris retention and recruitment, and minimum fire equipment available at the harvest site; and revise requirements that address harvesting within streamside management areas. In additions, the amendments add numerous definitions. You may obtain copies of the proposed rule amendment from the Forestry Division web site at <http://www.nmforestry.com>, or by contacting Kim Paul at (505) 476-3343 or kim.paul@state.nm.us.

All interested parties may participate in the hearing and will be given an opportunity to submit relevant evidence, data, views and arguments, orally or in writing. Anyone wishing to submit written comments may do so at the hearing, or prior to the hearing via email to kim.paul@state.nm.us or via mail to the State Forester, C/O Kim Paul, EMNRD, Forestry Division, P.O. Box 1948, Santa Fe, NM 87504. No statements will be accepted after the April 30, 2007 hearing's conclusion.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to

attend or participate in the meeting, please contact Kim Paul at least one week prior to the meeting or as soon as possible. Public documents can be provided in various accessible forms. Please contact Kim Paul at 476-3343, through Relay New Mexico at 1-800-659-1779 Voice or 1-800-659-8331 TTY, if you need a summary or other type of accessible form.

**NEW MEXICO GENERAL SERVICES DEPARTMENT
RISK MANAGEMENT DIVISION**

NOTICE OF PUBLIC HEARING

The Risk Management Division of the New Mexico General Services Department will hold a public hearing on repeal and replacement of rule 1.6.4 NMAC (“State Loss Prevention and Control Program”). The Hearing will be held at 10:00 a.m. on Thursday, May 3rd, 2007, at 1100 South Saint Francis Drive, Santa Fe, New Mexico in the Risk Management Division First Floor Conference Room, Suite 1004 in the Joseph Montoya Building.

The public hearing will be conducted to receive the presentation of views from interested persons with respect to the proposed repeal and replacement of rule 1.6.4 concerning the State Loss Prevention and Control Program that has been established pursuant to state statutory law, NMSA 1978, Section 15-7-3(A)(9) and Section 9-17-5.

Copies of the proposed rule can be obtained from:

Printed Copy
Gerald S. Rodriguez
GSD Risk Management Division
Joseph Montoya Building
1100 South Saint Francis Drive, Second Floor, Room 2073, Santa Fe, New Mexico 87505

Mailing Address:
P.O. Drawer 26110, Santa Fe, New Mexico 87502-0110
(505) 476-2177 Fax (505) 827-2843
Email: grodriguez@state.nm.us

Electronic Copy
An electronic version of the proposed rule can also be obtained from the website for the New Mexico General Services Department Risk Management Division at: <http://www.state.nm.us/gsd/rmd/>.

Written public comments regarding the proposed action must be submitted to the attention of Gerald S. Rodriguez at the above “Printed Copy” physical or mailing address, fax number, or email address. Written public comments must be received on or before 5:00 p.m. on the date of the public hearing,

May 3rd, 2007.

If you are a person with a disability who is in need of special assistance or a reasonable accommodation to attend or participate in the public hearing, please contact Gerald S. Rodriguez at the GSD Risk Management Division at (505)476-2177 / fax (505) 827-2843. The General Services Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO OFFICE OF GUARDIANSHIP

NOTICE OF PUBLIC RULEMAKING HEARING

The New Mexico Developmental Disabilities Planning Council, Office of Guardianship, hereby gives notice that a public hearing will be held on **Thursday, April 5, 2007 at 9:00 am at 2340 Menaul Blvd, N.E., Suite 350, Albuquerque, New Mexico 87107.**

The purpose of the hearing will be to receive comments on the amendments to the regulations by the addition of a new section regarding comprehensive evaluations relating to Guardian Services promulgated pursuant to NMSA 1978, section 28-16B-3(A).

Any person requesting a copy of the proposed rule or wishing to testify at the hearing should contact Robert Richards at (505) 476-7337 or by mail c/o Robert Richards, DDPC, Office of Guardianship, 810 W. San Mateo, Suite “C”, Santa Fe, New Mexico 87505, or by e-mail at robert_richards@qwest.net. Any person wishing to submit written or e-mail comments may do so by submitting them to Mr. Richards before the date of the hearing. No written or e-mail comments will be accepted after 5:00 p.m. on the day before the date of the hearing.

Persons requiring special accommodations at the hearing are asked to contact Mr. Richards at least two days before the date of the hearing so that arrangements can be made.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department (“Department”), hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on **May 2, 2007 from 9:00 am to 11:00 am.** The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.30.2 NMAC	STANDARDS FOR EXCELLENCE	Amend Section 9 (IMPLEMENTATION)

The proposed amendment to Section 9 (IMPLEMENTATION) of 6.30.2 NMAC (STANDARDS FOR EXCELLENCE) will establish procedures for waiver of the requirement that a site-level EPSS (Educational Plan for Student Success) be developed by each school within a school district.

Interested individuals may testify at the public hearing or submit written comments to Dr. Karen Kay Harvey, Assistant Secretary, Quality Assurance and Systems Integration Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar Avenue - Room 131, Santa Fe, New Mexico 87501-2786 E-MAIL ADDRESS: Karenk.harvey@state.nm.us (telefax (505) 827-5066 or 827-6416).

Written comments must be received no later than 5 p.m. on **May 2, 2007.** However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Annette Larkin, Executive Assistant, Quality Assurance and Systems Integration Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 at (505) 827-6571. The proposed rules will be made available at least thirty days prior to the hearings.

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

NEW MEXICO PUBLIC REGULATION COMMISSION
UTILITY DIVISION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE PETITION
OF THE UTILITY DIVISION STAFF
OF THE PUBLIC REGULATION COMMISSION
FOR A RULEMAKING TO ADOPT PROPOSED
RULE 770 AND RULE 970 TO CONFORM TO
THE NEW MEXICO PUBLIC UTILITY ACT,
UTILITY DIVISION STAFF OF THE PUBLIC
REGULATION COMMISSION,

Petitioner.

IN THE MATTER OF THE AMENDMENT OF
THE RULES CONCERNING PROCEDURES FOR
REVIEW OF RATES PROPOSED BY WATER AND
SANITATION DISTRICTS, 17.12.810 NMAC.

AMENDED NOTICE OF PROPOSED RULEMAKING

NOTICE is hereby given that the New Mexico Public Regulation Commission ("Commission") has commenced a rulemaking proceeding for the purpose of promulgating replacement rules to 17.12.770 NMAC, 17.12.810.11(C) NMAC and 17.13.970 NMAC. The proposed replacement rules seek to amend existing Commission rules in order to be consistent with amendments to NMSA 1978 Section 62-8-7.1 (2005) and NMSA 73-21-4(D) 2005 which changed the definitions of small water and sewer utilities and their ratemaking procedures.

On September 26, 2005, Staff filed its Petition requesting that the Commission promulgate replacement rules for 17.12.770 NMAC concerning small water utilities, and 17.13.970 NMAC, concerning small sewer utilities, to implement the statutory changes streamlining the procedures for rate changes for those utilities.

Staff has proposed replacement rules, which it presented to the Commission on April 27, 2006, and which it developed with the input of the industry, to implement these statutory changes. The Commission issued a Notice of Proposed Rulemaking ("Notice") on May 16, 2006 including Staff's proposed replacement rules.

After receipt of written comment and public hearings held on July 11, 2006, July 12, 2006 and July 17, 2006, respectively, on October 26, 2006 the Commission issued a Final Order Adopting Proposed Replacement Rules 17.12.770 NMAC, 17.12.810.11(C) NMAC and 17.13.970 NMAC ("Final Order"). In its subsequent order of March 6, 2007 the Commission found that the NOPR had failed to comply with the publication requirements of 17.1.120.9(A) NMAC which requires that prior to adoption or amendment of any rule, the Commission shall publish notice of its proposed action in the New Mexico Register and shall at least forty-five (45) days prior to its proposed action publish notice of its proposed action in newspapers of general circulation in the State of New Mexico so as to achieve statewide circulation. The Commission found that the Notice had not been published in either the New Mexico Register or newspapers of general circulation. On the basis of that finding, the Commission vacated its Final Order. The Commission also ordered that this Amended Notice be issued without delay.

The proposed replacement rules, presented here in the same form and identical to those attached to the Notice of Proposed Rulemaking issued on May 16, 2006 are attached hereto and identified as Amended Notice of Proposed Rulemaking Attachment A (proposed replacement rule 17.12.770 NMAC), Attachment B (proposed replacement rule 17.12.810.11 (C)) and Attachment C (proposed replacement rule 17.13.970 NMAC), respectively.

Comments suggesting changes to the rule amendments as proposed should state and discuss the particular reasons for the suggested changes and shall include all specific

language necessary or appropriate to effectuate the changes. Specific proposed language changes to the proposed rules shall be in legislative format. Interested persons shall file their written comments on the proposed rules no later than thirty (30) days from the date of mailing of the Notice. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this Notice. All previously submitted written comments, made either in response to the Notice of May 16, 2006 or oral comments made at public hearing of July 11, 2006, July 12, 2006 or July 17, 2006 will be given consideration by the Commission in its deliberations and are not required to be re-submitted.

Written comments or written response comments in response to this Amended NOPR shall be sent to:

Melanie Sandoval
New Mexico Public Regulation
Commission
Attention: Case Nos. 05-00387-
UT and 06-00176-UT
224 East Palace Avenue, Marian
Hall
Santa Fe, NM 87501
Telephone: (505) 827-6968

Copies of the proposed rules may be downloaded from the Commission's web site, www.nmprc.state.nm.us, under "Meetings," then "Public Notices."

The Commission will review all timely submitted written comments and will hold a public comment hearing on May 4, 2007 beginning at 10 AM and at the following location:

New Mexico Public Regulation
Commission
PERA Bldg.
4th Floor Hearing Room
1120 Paseo de Peralta
PO Box 1269
Santa Fe NM 87504-1269
(505) 827-4526

The record shall be closed at the conclusion of the public hearing, currently scheduled for May 4, 2007 unless the Commission orders that it be held open for the purpose of receiving additional written supporting data for a period not to exceed thirty (30) days.

Interested persons should contact the Commission to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled.

Any person with a disability

requiring special assistance in order to participate in a hearing should contact Cecilia Rios at 827-4501 at least 48 hours prior to the commencement of the hearing.

A copy of this Notice shall be published in the New Mexico Register and at least two newspapers of general circulation within the State of New Mexico and the Commission shall notify all utilities under the Commission's jurisdiction and any person or group filing a written request for advance notice of such proposed action. The Commission shall provide the Notice, including attachments, by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rules on the Commission's web site.

This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 6th day of March, 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON MARKS, VICE CHAIRMAN

DAVID W. KING, COMMISSIONER

CAROL K. SLOAN, COMMISSIONER

SANDY JONES, COMMISSIONER

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a rulemaking and public hearing will be held in the Board Room, 4900 Alameda Blvd NE, Albuquerque, New Mexico, commencing in executive session at 9:00 o'clock a.m. on Thursday, March 22, 2007. The public session will begin at 10:00 o'clock a.m. on Thursday, March 22, 2007. The Commission will consider adoption of the proposed amended rules for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.3.8 NMAC; 15.2.6.9 NMAC; 16.47.1.18 NMAC; and 16.47.1.20 NMAC (regarding stewards' authority.)

Copies of the proposed rules may

be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Suite A, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

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

Julian Luna
Agency Director

Dated: March 15, 2007

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES

TITLE 2 PUBLIC FINANCE
CHAPTER 40 EXPENDITURE OF PUBLIC FUNDS
PART 5 PURCHASING OF SERVICES FROM PERSONS WITH DISABILITIES

2.40.5.1 ISSUING AGENCY:

New Mexico Council for Purchasing from Persons with Disabilities, 435 Saint Michael's Drive, Building D, Santa Fe, New Mexico.
[2.40.5.1 NMAC - N, 03/30/2007]

2.40.5.2 SCOPE: All state agencies and local public bodies.
[2.40.5.2 NMAC - N, 03/30/2007]

2.40.5.3 STATUTORY AUTHORITY: NMSA 1978, Section 13-1C-1 through Section 13-1C-7.
[2.40.5.3 NMAC - N, 03/30/2007]

2.40.5.4 DURATION: Permanent.
[2.40.5.4 NMAC - N, 03/30/2007]

2.40.5.5 EFFECTIVE DATE: 03/30/2007, unless a later date is cited at the end of a section.
[2.40.5.5 NMAC - N, 03/30/2007]

2.40.5.6 OBJECTIVE: This regulation establishes certain procedures with respect to purchasing of services from persons with disabilities and clarifies which services provided by persons with disabilities are suitable for sale to state agencies and local public bodies.
[2.40.5.6 NMAC - N, 03/30/2007]

2.40.5.7 DEFINITIONS:

A. "Appreciable contribution" means significant labor of individuals with disabilities applied to a service.

B. "Brokering" means negotiating contracts, as an agency, between organizations or individuals, for compensation.

C. "Central non-profit agency" means a nonprofit agency approved pursuant to rules of the council to facilitate the equitable distribution or orders and services of:

- (1) qualified individuals; and
- (2) community rehabilitation programs.

D. "Council" means the

New Mexico council for purchasing from persons with disabilities.

E. "Community rehabilitation program" means a nonprofit entity:

(1) that is organized under the laws of the United States or this state, operated in the interest of person with disabilities and operated so that no part of the income of which inures to the benefit of any shareholder or other person;

(2) that complies with applicable occupational health and safety standards as required by federal or state law; and

(3) that, in the provision of services whether or not procured under the State Use Act, employs during the state fiscal year at least seventy-five percent person with disabilities in direct labor for the provision of services.

F. "Integration" means equal access for non-disabled and individuals with disabilities: the process of ensuring employment opportunities to all regardless of disability.

G. "Local public body" means a political subdivision of the state and the political subdivision agencies, instrumentalities and institutions.

H. "Individual with a disability" means persons who have a mental or physical impairment that constitutes or results in substantial impediment to employment as defined by the federal Rehabilitation Act of 1973. A person who is receiving services pursuant to an individualized plan for employment from the vocational rehabilitation of the public education department or from the commission for the blind shall be presumed to be a person with disability, as shall a person who is receiving supplemental security income or social security benefits based on disability.

I. "Qualified individual" a person with a disability who is a business owner, or a business that is primarily owned and operated by persons with disabilities that employs at least seventy-five percent persons with disabilities in the provision of direct labor, which has been approved by the council to provide services to state agencies and local public bodies.

J. "Services" means those services which are to be provided by persons with disabilities and which are suitable for sale to state agencies and local public bodies.

K. "State purchasing office" means the director of the purchasing division of the general services department.

L. "State Use Act program" means a program enacted through legislation by the New Mexico state legislature that allows meaningful employment opportunities through state and local gov-

ernment contracts to person with disabilities.

M. "Value added" means direct labor involved in delivering services and performed by persons with disabilities.
[2.40.5.7 NMAC - N, 03/30/2007]

2.40.5.8 DETERMINATION OF SERVICES SUITABLE FOR SALE TO STATE AGENCIES AND LOCAL PUBLIC BODIES BY PERSONS WITH DISABILITIES:

A. Services provided by persons with disabilities suitable for sale to state agencies and local public bodies:

(1) must be within the competency of the prospective provider;

(2) must have potential to provide positive, integrated employment outcome for persons with disabilities;

(3) may be approved as statewide, or by specific contract offering or by a state agency or local public body;

(4) require the approval by the council prior to being offered.

B. Any service which entails brokering solely on the part of the community rehabilitation program is not suitable for the State Use Act program. An appreciable contribution to the services must be made by persons with disabilities.

C. The decision that the labor of persons with disabilities constitutes appreciable contribution shall be at the discretion of the council.

D. Create a list of the identified services.
[2.40.5.8 NMAC - N, 03/30/2007]

2.40.5.9 ESTABLISHING, MAINTAINING AND PUBLISHING OF A LIST OF ALL SUITABLE SERVICES:

A. The council shall establish, approve and revise a list of suitable services through a contract with a community non-profit agency on an as needed basis.

B. Copies of the list shall be published at the state purchasing office and on-line at appropriate state websites, on a website maintained by the central non-profit agency, and may also be advertised in New Mexico business publications

C. The council requires that the central non-profit agency to establish procedures to submit a given service for council approval. The central non-profit agency shall be responsible for providing the council with information to substantiate the conditions for service determination.

D. Once approved by the council, services shall be included in a master list of approved services.

E. New services may be added to the list upon a majority vote at any council meeting.

[2.40.5.9 NMAC - N, 03/30/2007]

2.40.5.10 ESTABLISHING AND VERIFYING FAIR MARKET PRICE:

A. The council shall verify and revise the fair market prices through a contract with the central non-profit agency, on an as needed basis.

B. The council shall revise the fair market prices in accordance with the changing market conditions to ensure that contracted services offer the best value for state agencies and local public bodies.

C. The pricing standard for services should be as close as possible to prevailing market price not including the central non-profit agency fee.

D. The council shall set the price within a range submitted by the central non-profit agency taking into consideration the benefits associated with employment of persons with disabilities.

[2.40.5.10 NMAC - N, 03/30/2007]

2.40.5.11 PROCEDURE TO CERTIFY ELIGIBLE COMMUNITY REHABILITATION PROGRAMS AND QUALIFIED INDIVIDUALS:

The certification procedure to determine eligible services shall consist of a two part process:

A. Certification of eligibility as a qualified individual with a disability or community rehabilitation program as defined by statute.

B. Verification of ability to perform the service.

[2.40.5.11 NMAC - N, 03/30/2007]

2.40.5.12 PROCEDURE FOR APPROVAL OF CENTRAL NON-PROFIT AGENCY:

A. The council shall establish a procedure for approval of a central non-profit agency that shall hold contracts, facilitate the equitable distribution of orders for services to be procured by state agencies and local public bodies and market approved services to state agencies and local public bodies.

B. The council shall request proposals from applicants which provide evidence that the central non-profit agency is a private, non-profit entity within the state which:

(1) has a mission which includes employment of persons with disabilities;

(2) is not a direct-service provider;

(3) can negotiate contracts;

(4) has knowledge of state and local governmental contracting policies and procedures;

(5) can demonstrate independ-

ence to equitably distribute contracts for procured services;

(6) can manage the scale of operations required; and

(7) has an approved operations manual which details all policies and procedures for operation of the CENTRAL NON-PROFIT AGENCY.

C. Approval of the central non-profit agency shall be by a minimum of two-thirds majority vote of the council.

[2.40.5.12 NMAC - N, 03/30/2007]

2.40.5.13 PROCEDURES FOR OPERATION OF CENTRAL NON-PROFIT AGENCY, INCLUDING FEE STRUCTURE:

A. The council shall ensure that the central non-profit agency has an approved operations manual which details all policies and procedures for operation of the central non-profit agency.

B. The council shall establish a fee to be paid to the central non-profit agency on the basis of contracts procured from state agencies and other local public bodies. The fee will be added to the fair market price paid by the state agencies and local public bodies.

[2.40.5.13 NMAC - N, 03/30/2007]

2.40.5.14 OTHER MATTERS RELATED TO THE STATE USE ACT:

A. It is the council's policy to identify, respond to, and equitably distribute, to as broad a base of eligible participants as possible, all relevant contract opportunities.

B. The council reserves the authority to make final contract distribution decisions based on the above policy and process, as well as any other unique factors or special circumstances. The central non-profit agency shall establish an appeals process for contract distribution or disputes with the council being the final determining body.

C. The council shall address any other matter necessary to the proper administration of the State Use Act.

[2.40.5.14 NMAC - N, 03/30/2007]

2.40.5.15 INTEGRATION, FAIR PAY AND ADDED VALUE:

It is the council's policy to ensure that the:

A. work provides opportunities for integration with non-disabled persons;

B. work provides fair pay based on prevailing wages;

C. work provides equitable opportunities for the employment of people with disabilities;

D. services provide added value.

[2.40.5.15 NMAC - N, 03/30/2007]

HISTORY OF 2.40.5 NMAC:
[RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.7.10 NMAC Sections 3, 5, 7, 100, 101, 102, 103, 200, 201, 300, 400, 500, 600, effective April 16, 2007.

20.7.10.3 STATUTORY AUTHORITY: NMSA 1978, Sections 74-1-8, 74-1-13 and 74-1-13.1.

[20.7.10.3 NMAC - Rp 20 NMAC 7.1.1.3, 12/04/2002; A, 04/16/2007]

20.7.10.5 EFFECTIVE DATE: December 4, 2002, except where a later effective date is indicated in the history note at the end of a section.

[20.7.10.5 NMAC - Rp 20 NMAC 7.1.1.5, 12/04/2002; A, 04/16/2007]

20.7.10.7 DEFINITIONS: In addition to the terms defined in 40 CFR Parts 141 and 143, the following terms, as used in this part shall have the following meanings.

A. "As-built drawings" means construction drawings that show details of work as originally planned plus modifications and deviations to reflect actual construction.

~~[A-] B.~~ "CFR" means the code of federal regulations.

~~[B-] C.~~ "Community water system" means a public water system which serves at least fifteen service connections used by year round residents or regularly serves at least twenty five year round residents.

~~C.~~ "Contaminant" means any physical, chemical, biological or radiological substance or matter in water that may adversely affect human health or the aesthetic quality of the water.

~~[D-] E.~~ "Cross-connection" means ~~[a physical connection or arrangement between otherwise separate piping systems whereby water may flow between the two systems.]~~ any unprotected actual or potential connection or structural arrangement between a public water system and any other source or system through which it is possible to introduce into any part of the public water system any contaminant or non-potable substance.

~~[E-] F.~~ "Department" means the New Mexico environment department.

~~[F-] G.~~ "Disinfectant" means any oxidant or equivalent agent added to water in any part of the treatment or distribution process intended to kill or inactivate

pathogenic organisms, including but not limited to chlorine, chlorine dioxide, chloramines and ozone.

G. "Disinfection" means a process that kills or inactivates pathogenic organisms in water.

H. "Maximum contaminant level" or "MCL" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.]

E. "Guidance document" means any manual or other document developed or adopted by the department for official use to provide general direction, instruction or advice to department employees in determinations regarding application of or compliance with regulations.

[H.] E. "Modification" means the replacing, changing, installing, adding to, or construction of a component of an existing public water system to increase or decrease the system's capacity to draw or supply water or to improve its performance or service life. Neither routine maintenance nor the replacement of electrical or mechanical equipment is a modification for purposes of this part.

[J.] "Non community water system" means a public water system that is not a community water system. A non community water system is either a "transient non community water system" or a "non-transient non community water system."

K. "Non transient non community water system" means a public water system that is not a community water system and that regularly serves at least twenty five of the same persons over six months per year.

L. "Person" means an individual, corporation, company, association, partnership, municipality, or state, federal or tribal agency.]

[M.] G. "Non-public water system" means a system for the provision of water for human consumption for domestic purposes, if such system does not have at least fifteen service connections and does not regularly serve an average of twenty-five individuals at least sixty days out of the year.

[N.] "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if the system has at least fifteen service connections or regularly serves an average of twenty five individuals daily at least sixty days out of the year. Such term includes: any collection device, including but not limited to wells, spring boxes, infiltration galleries or intake structures, and any treatment, storage, and distribution facilities under control of the operator of such system; and any collection device or pretreat-

ment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a "community water system" or a "non community water system.]"

[O.] H. "Public water system project" or "project" means the construction of a new public water system, modification to an existing public water system, or conversion of a non-public water system to a public water system.

I. "Record drawings" means as-built drawings certified by a registered professional engineer on behalf of a public water system.

[P.] J. "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water. A sanitary survey evaluates at least nine components: source; treatment; distribution system; finished water storage; pumps; pump facilities and controls; monitoring and reporting and data verification; system management and operation; and operator compliance with state requirements.

[Q.] K. "Secretary" means the secretary of the environment department, or an authorized representative.

[R.] L. "Service connection" means a pipe, hose, appurtenance, constructed conveyance or any other temporary or permanent connection between a public water system and a user.

[S.] M. "State act" means the Environment Improvement Act, NMSA 1978, Section 74-1-1 et seq.

[T.] "Supplier of water" means any person who owns or operates a public water system.

U. "Transient non community water system" means a non community water system that does not regularly serve at least twenty five of the same persons over six months per year.]

[V.] N. "USEPA" means the United States environmental protection agency.

[20.7.10.7 NMAC - Rp 20 NMAC 7.1.I.103, 12/04/2002; A, 04/16/2007]

20.7.10.100 ADOPTION OF 40 CFR PART 141:

A. Except as otherwise provided in this section, the regulations of the USEPA set forth at 40 CFR Part 141 through [September 13, 2002] July 1, 2005 are hereby incorporated by reference into this part. (Notwithstanding the incorporation of 40 CFR Part 141 through July 1, 2005, the following USEPA regulations are also incorporated by reference to the extent

that they amend Part 141:

(1) Stage 2 Disinfectants and Disinfection Byproducts Rule, 71 Fed. Reg. 388 (Jan. 4, 2006);

(2) Long Term 2 Enhanced Surface Water Treatment Rule, 71 Fed. Reg. 654 (Jan. 5, 2006).

[B.] The terms "contaminant," "disinfectant," "disinfection" and "public water system" have the meanings set forth in Section 20.7.10.7 of this Part, in lieu of the meanings set forth in 40 CFR section 141.2.]

[C.] B. The term "state" means the New Mexico environment department when used in 40 CFR Part 141, in lieu of the meaning set forth in 40 CFR section 141.2.

[D.] C. The term "service connection" has the meaning set forth in Subsection L of 20.7.10.7 NMAC, in addition to the meaning set forth in 40 CFR section 141.2.

[20.7.10.100 NMAC - N, 12/04/2002; A, 04/16/2007]

20.7.10.101 ADOPTION OF 40 CFR PART 143:

A. Except as otherwise provided, the regulations of the USEPA set forth at 40 CFR Part 143 through [September 13, 2002] July 1, 2005 are hereby incorporated by reference into this part.

[B.] The terms "public water system" and "contaminant" have the meanings set forth in Section 20.7.10.7 of this Part, in lieu of the meanings set forth in 40 CFR section 143.2.]

[C.] B. The term "state" means the New Mexico environment department when used in 40 CFR Part 143, in lieu of the meaning set forth in 40 CFR section 143.2. [20.7.10.101 NMAC - N, 12/04/2002; A, 04/16/2007]

20.7.10.102 [REFERENCES: The following materials are hereby incorporated by reference to in this Part.] GUIDANCE DOCUMENTS: The current editions of the following materials, including all future editions and amendments are used by the department as guidance documents for determining generally acceptable standards for construction and operation of public water systems.

A. *Standards for disinfecting water mains, [1999] wells, water-storage facilities, and water treatment plants.* American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

[B.] *Standards for Disinfection of Wells, 1997, American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.*

C. *Standards for Disinfection of Water Storage Facilities;*

~~1992, American Water Works Association, 6666 West Quinney Avenue, Denver, Colorado 80235.~~

~~**D.** Standards for Disinfection of Water Treatment Plants, 1997, American Water Works Association, 6666 West Quinney Avenue, Denver, Colorado 80235.]~~

~~**[E.] B.** Manual for the certification of laboratories analyzing drinking water for microbiological parameters, [October 1999,] New Mexico Environment Department, Drinking Water Bureau, 525 Camino de Los Marquez, Santa Fe, Suite 4, New Mexico 87501.~~

~~**[F.] C.** Laboratory certification manual for chemistry and radiochemistry parameter, drinking water analysis, [September 2000,] New Mexico Environment Department, Drinking Water Bureau, 525 Camino de Los Marquez, Santa Fe, Suite 4, New Mexico 87501.~~

~~**[G.] D.** Recommended standards for water works, [1997,] Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, P.O. Box 7126, Albany, New York 12224.~~

~~**E.** Recommended standards for water facilities, Construction Programs Bureau, New Mexico Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.~~

~~**[H.] E.** NSF listings - drinking water treatment chemicals - health effects, [2002,] American National Standards Institute, NSF/ANSI 60[2002], 25 West 43rd Street, New York, NY 10036.~~

~~**[H.] G.** NSF listings - drinking water system components - health effects, [2002,] American National Standards Institute, NSF/ANSI 61[2002,] 25 West 43rd Street, New York, NY 10036.~~

~~**H.** NSF listings - drinking water treatment units - health effects, American National Standards Institute, NSF/ANSI 42, 44, 53, 58, 67, 177, 25 West 43rd Street, New York, NY 10036.~~

~~**I.** NSF listings - plumbing system components - health effects, American National Standards Institute, NSF/ANSI 14, 24, 25 West 43rd Street, New York, NY 10036.~~

~~**J.** List of approved backflow prevention assemblies, University of Southern California Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California, Kaprielian Hall 200, Los Angeles, CA 90089-2531.~~

~~**K.** UL listings - drinking water treatment additives, Underwriters Laboratory, 333 Pfingston Road, Northbrook, IL 60062-2096.~~

~~**L.** UL listings - drinking water treatment/filtration units, Underwriters Laboratory, 333 Pfingston~~

~~Road, Northbrook, IL 60062-2096.~~

~~**M.** UL listings - drinking water system components and additives, Underwriters Laboratory, 333 Pfingston Road, Northbrook, IL 60062-2096.~~

~~**N.** UL listings - distribution and plumbing products, Underwriters Laboratory, 333 Pfingston Road, Northbrook, IL 60062-2096.~~

~~**O.** Cross connection control manual, USEPA, Washington D.C., 20460, EPA 816-R-03-002.~~

~~[20.7.10.102 NMAC - N, 12/04/2002; A, 04/16/2007]~~

20.7.10.103 AVAILABILITY OF REGULATIONS AND MATERIALS INCORPORATED BY REFERENCE: Regulations, ~~and~~ materials incorporated by reference into this part and guidance documents are available for inspection at the New Mexico Environment Department Drinking Water Bureau, 525 Camino de Los Marquez, Suite 4, Santa Fe, New Mexico 87501.

[20.7.10.103 NMAC - Rp 20 NMAC 7.1.XIII.1306, 12/04/2002; A, 04/16/2007]

20.7.10.200 PUBLIC WATER SYSTEM PROJECTS:

A. Except as provided in ~~subsection~~ Subsections B and C of this section, no person shall undertake a public water system project without first obtaining written approval from the department.

B. The following public water system projects do not require approval from the department:

(1) a modification that involves the replacement or construction of less than 1,000 feet of distribution piping and appurtenances during any sixty calendar day period; or

(2) a modification that involves the replacement or construction of only distribution lines and appurtenances, pump stations, or pressure regulating facilities for which the public water system employs a water utility staff that includes, either by contract or direct employment, a professional engineer registered in New Mexico who is responsible for the project;

(3) on-going operation and maintenance procedures; the following activities are considered to be on-going operation and maintenance procedures:

(a) pipeline leak repair;
(b) replacement of existing deteriorated pipeline where the new pipeline segment is the same size and alignment as the pipeline to be replaced;

(c) distribution pipeline additions where the pipeline size is the same as the main supplying the addition, the length is less than 500 feet and contiguous segments of new pipe total less than 1,000 feet in any sixty calendar day period;

(d) entry into a drinking water storage facility for the purposes of cleaning and maintenance;

(e) the replacement of chemical feed pumps and associated appurtenances;

(f) the replacement of electrical or mechanical equipment in an existing public water supply system; and

(g) the replacement of equipment or pipeline appurtenances with the same type, size and rated capacity (fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders and booster pumps including deep well pumps).

C. The plan approval requirement in this section may be waived for transmission, storage, and distribution projects proposed for implementation that are certified to be in conformance with a "master design plan" previously approved by the department. Such master design plans may be approved upon submission to the department and must at a minimum contain:

(1) identification of existing system components and service area;

(2) a complete set of standard plans, details, and specifications for any component or facility to be eligible for a waiver under this section; and

(3) written verification that the standard plans, details, and specifications have been adopted by ordinance or resolution in such a manner as to require their use in all associated projects.

D. All changes to the standard plans, details, or specifications must be approved by the department prior to being eligible for a waiver under this section.

E. To obtain a waiver, the owner of the system must submit, in lieu of the application materials in 20.7.10.201 NMAC, a written summary of the project and certification that the project will be installed in accordance with the approved drawings and specifications, signed by a registered professional engineer who is responsible for the design, development, or maintenance of the public water system. All waiver requests shall be properly documented prior to receiving the department's approval.

[20.7.10.200 NMAC - Rp 20 NMAC 7.1.V.501 and 502, 12/04/2002; A, 04/16/2007]

20.7.10.201 APPLICATIONS FOR PUBLIC WATER SYSTEM PROJECT APPROVAL:

A. Any person proposing to undertake a public water system project that requires the review and approval of the department shall complete, sign and submit an application to the department as described in this section.

B. The applicant shall submit an application to the department no less

than thirty days prior to advertising the public water system project for bid or, if the project is not advertised for bid, not less than thirty days prior to ~~[entering into a]~~ the commencement of construction ~~[contract]~~, except that the department may permit an applicant to advertise for bids ~~[-enter into a construction contract]~~ or commence construction of a public water system project prior to the submission of a written application if, in the judgment of the department, exigent circumstances warrant a waiver of the thirty-day notice requirement. Permission to advertise for bids ~~[-enter into a construction contract or proceed with construction]~~ or commence construction without first submitting an application shall expire if the applicant does not submit a written application to the department that meets the requirements of this section within fifteen days of the date of permission.

C. The application shall be made on forms furnished by the department and shall include:

(1) ~~[two sets]~~ one set of complete plans and specifications for the project; the plans and specifications must be prepared under the direct supervision of and sealed by a professional engineer registered in New Mexico;

(2) an engineering design summary which shall include engineering information that sets forth the basis of the project design;

(3) a plan to disinfect the system and sample for the presence of bacterial contamination following completion of the project and prior to providing water to the public; the criteria used by the department to review the adequacy of the plan shall include the current standards of the American water works association for disinfecting water mains, [1999, American Water Works Association; Standards for Disinfection of Wells, 1997, American Water Works Association; Standards for Disinfection of Water Storage Facilities, 1992, American Water Works Association; and Standards for Disinfection of Water Treatment Plants, 1997, American Water Works Association;] wells, water-storage facilities and water treatment plants;

(4) an inventory of existing and planned sources of actual and potential contamination located within one thousand (1,000) feet of a water source proposed to be utilized by the public water system; and

(5) all other relevant information as needed by the department to determine compliance with this part.

D. The department shall require an applicant proposing to undertake a public water system project to submit, in addition to the materials set forth in Subsection C of this section:

(1) for projects involving the con-

struction of a new public water system, documents demonstrating that the public water system has sufficient technical, managerial and financial capacity, such as a certified operator, testing equipment required to meet regulatory treatment techniques, ownership accountability, staffing and organization, revenue sufficiency, credit worthiness and fiscal management; and

(2) for projects involving the construction of a new water source, analytical results of nitrate sampling conducted during exploratory drilling or aquifer testing and prior to commencement of construction;

(3) for projects involving the construction of distribution facilities, provision shall be made to include sufficient hydrants or blow-offs to provide for complete flushing of the newly constructed facilities; this may include reference to existing flushing appurtenances.

E. The department shall either approve an application, approve an application subject to conditions or deny an application, and shall notify the applicant by mail of such determination within thirty days after filing of a complete application pursuant to this section. The department shall not condition or in any manner require as part of an approval that the applicant use a specific process or type of equipment.

F. The department may deny an application for a public water system project, in whole or in part, if the department determines that:

(1) any maximum contaminant level (MCL) or treatment technique set forth at 40 CFR ~~[sections 141.11-141.16 and 141.61-141.65]~~ Part 141 will not be met after completion of the project;

(2) any other requirement of 20.7.10 NMAC will not be met after completion of the project;

~~[(2)]~~ (3) the design of the project is inconsistent with generally acceptable standards for construction of public water systems and their components including, but not limited to, the ~~[Recommended Standards for Water Works, 1997, Great Lakes Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers]~~ recommended standards for water facilities, Construction Programs Bureau, New Mexico Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87502;

~~[(3)]~~ (4) the design of the project will not meet project goals;

~~[(4)]~~ (5) the public water system does not demonstrate sufficient technical, managerial or financial capacity; or

~~[(5)]~~ (6) an existing or planned source of actual or potential contamination may adversely impact a water source proposed to be utilized by the system. To make this determination, the department may

require the applicant to submit analyses relating to hydrogeological, soil or ground water conditions at the site, and/or information regarding proposed technology or installation methods that may be employed to prevent or mitigate the impact of the contaminant source on the water source.

G. The department's approval of an application is limited to the sanitary features of design and other features of public health significance. The department's approval of an application does not imply a guarantee of any type for the constructed project nor does it relieve the applicant from the responsibility for the overall integrity of the project, the adequacy of the project's design, or from the responsibility of complying with any of the provisions of this part or other applicable state and federal laws or regulations.

H. The department is not responsible for increased costs resulting from defects in the plans, design drawings and specifications or any other contract documents.

I. The applicant shall notify the department in writing when work on the public water system project is initiated. The department may inspect the project during construction and at completion to ensure compliance with the approved plans and specifications.

J. If a public water system project receives approval from the department but does not commence construction within one year after the date of department approval, the supplier of water must submit a new application to the department.

K. ~~[A construction field change not provided for in a project's approved plans and specifications and that constitutes a material change to the originally approved project design must be approved by the department before the field change is initiated. In the event that this requirement may result in construction delays, the department may grant verbal approval. If the department grants verbal approval, the applicant must submit a copy of the completed field change order to the department within thirty days after verbal approval is granted.]~~ Any deviations from approved plans or specifications affecting capacity, operating units, the functioning of water treatment processes, or the quality of water to be delivered, shall be reported to the department in writing. If deemed appropriate, the department may require that revised plans and specifications be submitted for review. Revised plans or specifications shall be submitted to the department in time to permit the review and approval of such plans or specifications before any construction work, which will be affected by such changes, is begun. In the event that this requirement would result in construc-

tion delays, verbal approval by the department may be given followed by written approval within 30 days. The applicant must submit a copy of the completed change order to the department as soon as possible for review, final approval and filing.

L. Staff from the department, after reasonable notice and presentation of credentials, may make visits to the work site to assure compliance with these rules. In the event deficiencies are noted, the engineer will be notified in writing of any deficiency. All deficiencies must be resolved prior to the start-up of the system or component of the system.

M. The department shall be informed when a public water supply system project, or well-defined phase thereof, is at or near completion. The new or modified facility shall not be used to produce, store, distribute, or treat potable water for public consumption until the department has been notified in writing. This notification shall consist of:

(1) a written statement from a registered professional engineer or representative of the water system that all conditions of project approval were accomplished;

(2) evidence of proper flushing and disinfection in accordance with the appropriate ANSI/AWWA Standard, including bacteriological sampling results;

(3) other water quality data where appropriate;

(4) all other documentation which may have been required during the plan review process; and

(5) confirmation that the water system owner has been provided with an operation and maintenance manual for the new facility, where appropriate.

N. The supplier of water shall submit record or as-built plans and certification of project completion to the department within ninety days after completion of the project.

[20.7.10.201 NMAC - Rp 20 NMAC 7.1.I.109 and 20 NMAC 7.1.V.502, 12/04/2002; A, 04/16/2007]

20.7.10.300 COMPLIANCE; EMERGENCY POWERS:

A. No public water system shall supply drinking water to the public unless the system is operated and maintained in compliance with this part.

B. Powers of the secretary.

(1) The secretary may take any action necessary to protect the health of persons who are or may be served by a public water system, including but not limited to issuing orders, assessing penalties or commencing a civil action for appropriate relief:

(a) if the public water system fails to meet any requirement of this part;

(b) upon receiving information

that a contaminant, whether or not listed in 40 CFR [~~sections 141.11-141.16 and 141.61-141.66,~~] Part 141, Subparts B and G, is present in or likely to enter the public water system, that the presence of such contaminant may present an imminent and substantial endangerment to the health of persons served by the system, and that appropriate local authorities have not acted to protect the health of such persons; or

(c) in response to a civil emergency involving public drinking water; the secretary's response shall be coordinated, when appropriate, with other state emergency response and relief efforts.

(2) If the secretary determines that treatment of water is necessary for a public water system to meet the maximum contaminant levels set forth at 40 CFR [~~sections 141.11-141.16 and 141.61-141.66,~~] Part 141, Subparts B and G, such treatment shall be continuously maintained until the public water system can demonstrate to the secretary that such treatment is no longer necessary.

[20.7.10.300 NMAC - Rp 20 NMAC 7.1.II.201, 12/04/2002; A, 04/16/2007]

20.7.10.400 GENERAL OPERATING REQUIREMENTS:

A. Protection of public water systems during routine maintenance or replacement of electrical or mechanical equipment. A public water system shall prevent contamination of the water in the system while undergoing routine maintenance or replacement of electrical or mechanical equipment.

B. Security and protection of a public water system. Any part or component of a public water system [~~such as~~] including but not limited to spring junction boxes, well houses, storage reservoirs, collection devices, pump facilities, and treatment facilities shall be constructed, operated and maintained to prevent unauthorized entry to, flooding of, and contamination of, the water supply.

C. Protection of a public water system well. A ground water supply well serving a public water system shall have a sanitary seal installed at the wellhead to protect against entry of storm water and other non-potable fluids or foreign materials and against access by insects, rodents, birds or other vermin. Well vents shall be screened with a fine corrosion-resistant screen (24 mesh or smaller). All cracks, joints or other openings at the wellhead and all penetrations to the casing at or near the ground surface shall be tightly sealed with an impermeable material.

D. Finished water storage facilities. A finished water storage facility shall be protected from flooding or infiltration of raw or non-potable water and from entry by birds, insects, rodents or other ver-

min. Overflow pipes and vents shall be screened with a corrosion-resistant material or be fitted with an acceptable flap valve [~~and~~]. Access hatches or openings that are below the maximum operating water level shall be fitted with a watertight cover or appropriate seal or gasket. Roof hatches or other openings above the maximum operating water level shall be fitted with a watertight cover, appropriate seal or gasket, or framed above the surface of the tank at the opening. Framed hatches must be fitted with a solid cover that overlaps the framed opening and extends down around the frame. All framed hatches must restrict the entry of vermin or water.

E. Notice to the department. If the safety precautions or preventive measures required to be employed under this section fail to protect the public water system from unauthorized entry or contamination, or if the water supply is endangered for any reason, the supplier of water shall immediately notify the department and take appropriate action to protect the supply.

F. Disinfection following the completion of a public water system project requiring department approval. Any part or component of a public water system that has undergone construction or modification requiring department approval shall be flushed, disinfected and sampled for the presence of bacterial contaminants upon completion of the project and prior to providing water to the public. Disinfection and sampling shall be conducted in accordance with a plan submitted to and approved by the department pursuant to Paragraph (3) of Subsection C of 20.7.10.201 NMAC.

G. Disinfection following construction, modification or repair not requiring department approval. Any part or component of a public water system that has undergone repair, construction or modification not requiring department approval shall be flushed, disinfected and sampled in accordance with the current editions of the standards for disinfecting water mains, [~~1999,~~] American water works association; standards for disinfection of wells, [~~1997,~~] American water works association; standards for disinfection of water-storage facilities, [~~1992,~~] American water works association; and standards for disinfection of water treatment plants, [~~1997,~~] American water works association.

H. Disinfection of seasonally operated facilities. A public water system that operates on a seasonal basis shall be flushed and disinfected following the non-use period and shall conduct special sampling to demonstrate the absence of bacterial contaminants in the system prior to providing drinking water to the public. During the public water system's non-use period, the public water system shall be

maintained to prevent unauthorized entry to, and contamination of, the water supply.

I. Maintenance and disinfection of storage structures. All materials used to re-coat or repair the interior of water storage structures must be suitable for potable water contact. After the interior of a storage structure has undergone maintenance or re-coating, the storage structure must be flushed and disinfected pursuant to Subsection G of this section.

J. Prohibition of iodine as a disinfectant. No public water system shall use iodine as a disinfectant.

K. Direct and indirect additives. A component, material, treatment chemical or other substance that may come into contact with drinking water ~~[must meet the most recent applicable safety standards from, or be certified by, the American National Standards Institute/National Sanitation Foundation prior to use or application (NSF/ANSI 60 and 61)-]~~ shall be certified by an independent, third-party certifier accredited by ANSI as meeting at a minimum the most recent version of NSF/ANSI standard 60: drinking water treatment chemical-health effects, or NSF/ANSI standard 61: drinking water system components-health effects.

L. Cross-connections. Cross-connections to a public water system or within a public water system shall be prohibited, unless the public water system is protected by a ~~[device or method acceptable to the department]~~ method acceptable to the department using either a device listed by the foundation for cross connection control and hydraulic research or a device acceptable to the department to prevent the back flow of water.

M. Operator certification. Public water systems shall comply with the utility operator certification requirements in the Utility Operator Certification Act, NMSA 1978, 61-33-1 et seq. as amended, and in regulations and program requirements adopted pursuant to the Safe Drinking Water Act.

[20.7.10.400 NMAC - Rp 20 NMAC 7.1.II.208, 12/04/2002; A, 04/16/2007]

20.7.10.500 S A M P L I N G REQUIREMENTS:

A. Pursuant to NMSA 1978, 74-1-13.1, the department shall test non-transient non-community water systems for arsenic, fluoride and radionuclides. The reporting and public notification requirements for non-community water systems for these contaminants shall be identical to those for community water systems as set forth in 40 CFR Subpart Q.

~~[A.]~~ **B.** A supplier of water shall begin routine sampling in accordance with 40 CFR Part 141 within ninety days

after commencing operation of a public water system.

~~[B.]~~ **C.** All public water systems shall conduct sampling at the rates set forth in 40 CFR Part 141, Subpart C, except that non-transient non-community systems shall conduct coliform sampling at the same rates as like-sized community water systems in 40 CFR 141.21(a)(2). The ~~[secretary]~~ department may order a supplier of water, when necessary, to conduct more frequent sampling than is required under 40 CFR Part 141.

~~[C.]~~ **D.** The ~~[secretary]~~ department may order a public water system that uses two or more water sources to collect special purpose samples directly from the water sources, in addition to routine samples from sampling points as required under 40 CFR Part 141.

[20.7.10.500 NMAC - Rp 20 NMAC 7.1.III.301, 12/04/2002; A, 04/16/2007]

20.7.10.600 PUBLIC NOTIFICATION:

A. Non-transient non-community water systems that exceed the MCL for arsenic or radionuclides set forth at 40 CFR sections 141.11, 141.62 [~~141.15-141.16~~] and 141.66 or exceed one-half the MCL for fluoride set forth at 40 CFR section 141.62 shall comply with the public notification requirements set forth at ~~[40 CFR section 141.32 and at]~~ 40 CFR Subpart Q.

B. A supplier of water shall notify persons served by the public water system to boil water used for drinking or culinary purposes if routine coliform samples indicate the presence of bacterial contamination which would not otherwise trigger the public notice requirements set forth at ~~[40 CFR section 141.32 and at]~~ 40 CFR Subpart Q but which, in the judgment of the department, poses a threat to public health and safety. If the supplier of water fails to provide notice on its own, or at the direction of the department, the department may directly notify the persons served by the system.

C. If the safety of a water supply is endangered for any reason, the supplier of water shall notify persons served by the public water system of appropriate action to protect themselves against any waterborne hazards. If the supplier of water fails to take such action on its own, or at the direction of the department, the department may directly notify the persons served by the system.

[20.7.10.600 NMAC - Rp 20 NMAC 7.1.IV.402, 12/04/2002; A, 04/16/2007]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION

CHAPTER 2 ESTABLISHMENT OF POST-SECONDARY EDUCATIONAL INSTITUTIONS

PART 4 GEOGRAPHIC AREAS OF RESPONSIBILITY

5.2.4.1 ISSUING AGENCY: State of New Mexico Higher Education Department

[5.2.4.1 NMAC - N, 05/01/07]

5.2.4.2 SCOPE: All public two-year postsecondary institutions operating within and receiving financial support from the state of New Mexico, offering associate degree and certificate programs.

[5.2.4.2 NMAC - N, 05/01/07]

5.2.4.3 STATUTORY AUTHORITY: Authority for 5.2.4 NMAC is found in NMSA 1978 Sections 21-1-26, 21-1-26.3, 21-2-5, and 21-2A-11 (1996 Repl. Pamph.).

[5.2.4.3 NMAC - N, 05/01/07]

5.2.4.4 DURATION: Permanent.

[5.2.4.4 NMAC - N, 05/01/07]

5.2.4.5 EFFECTIVE DATE: May 1, 2007, unless a later date is cited at the end of a section.

[5.2.4.5 NMAC - N, 05/01/07]

5.2.4.6 OBJECTIVE:

A. The objective of 5.2.4 NMAC is to establish geographic areas of responsibility encompassing the entire state to facilitate the effective planning and delivery of public two-year postsecondary educational programs and services throughout New Mexico, with due regard for economy and efficiency of delivery and the avoidance of unnecessary program duplication.

B. This policy acknowledges that New Mexico is a diverse state and flexibility in serving different regions must be embedded and honored in the implementation of this policy. Since state resources are limited, the purpose of 5.2.4 NMAC is to create a more efficient structure for the delivery of programs and services.

[5.2.4.6 NMAC - N, 05/01/07]

5.2.4.7 DEFINITIONS:

A. "Department" means the New Mexico higher education department.

B. **“Existing programs”** means academic, career-technical, and remedial programs leading to a certificate or associate degree that was offered by a two-year public postsecondary institution within a geographic area of responsibility as of January 1, 2006.

C. **“Geographic area of responsibility (GAR)”** is an assigned geographic region encompassing one or more public school districts where a public postsecondary educational institution has the exclusive right to meet the lower division postsecondary educational needs of the area, subject only to the limitations imposed by its enabling legislation and consistent with the provisions of this policy.

D. **“Two-year postsecondary institution”** is a publicly supported postsecondary educational institution that has the exclusive right to meet the lower division postsecondary educational needs of this assigned geographic region, subject only to limitations imposed by its enabling legislation and consistent with the provisions of this policy, including the two-year programs of western New Mexico university and northern New Mexico college.

E. **“Host institution”** means the public postsecondary educational institution that has been assigned to a geographic area of responsibility.

F. **“Partner institution”** means a public two-year postsecondary educational institution that agrees through a formal memorandum of understanding to provide educational programs and services within a geographic area of responsibility assigned to another public two-year postsecondary educational institution.

G. **“Right of first refusal”** means that an institution assigned to a geographic area of responsibility must first decline, in writing, to the New Mexico higher education department within 60 days, to provide requested educational services before another New Mexico public postsecondary institution may offer those services in that service area. This provision shall not apply to existing programs as defined in this policy.

[5.2.4.7 NMAC - N, 05/01/07]

5.2.4.8 ESTABLISHMENT OF GEOGRAPHIC AREAS OF RESPONSIBILITY:

A. By April 16, 2007, each public postsecondary institution offering associate degrees and certificate programs, upon approval of its governing board, shall petition the department to establish a GAR for the institution. The proposed GAR shall consist of all public school districts or portions thereof which are currently part of the local taxing district that supports the institution, or areas outside of its taxing district which the institution has historically served

(grandfather clause).

B. By May 1, 2007, the department shall assign GARs to each public postsecondary educational institution offering associate degrees and certificate programs in such a manner that all geographic areas of the state are included.

C. The department shall consider the following factors, while determining which public school districts are to be assigned to the GAR for each public postsecondary institution:

(1) boundaries of the current local taxing district, if applicable;

(2) market share of existing educational services within the proposed GAR as determined through an analysis conducted by the department;

(3) county boundaries, public K-12 districts or portions thereof that have provided courses and/or programs prior to the implementation of this policy by a two-year institution, i.e. the “grandfathering in” of areas served by a two-year institution outside of its taxing district;

(4) boundaries of the local small business development center (SBDC) service area shall be given consideration if college level coursework has historically been provided within the assigned SBDC region;

(5) requested boundaries of the proposed service area outside of the current taxing district; this could include areas in which more than one institution is currently providing services, as well as areas where no services are currently provided.

[5.2.4.8 NMAC - N, 05/01/07]

5.2.4.9 RESPONSIBILITIES OF HOST INSTITUTION: Upon assignment of a GAR by the department, the host institution shall assume the following responsibilities.

A. Coordinate a needs assessment to determine the programs needed to support current and future workforce demands within the GAR.

B. Provide educational services to address identified needs in a cost-effective and efficient manner. These services may include lower-division course work offered for academic credit, dual-credit programs, developmental education services, adult basic education and literacy programs, and non-credit workforce training and community education programs.

C. Partner with other two-year postsecondary educational institutions to serve the needs of the GAR by serving as a broker to bring in appropriate programs not offered by the host institution.

D. Maintain the facility and support services, unless otherwise negotiated with partnering institutions.

E. Assume the leadership role in providing library services.

F. Provide leadership in

the crafting of a memorandum of understanding (MOU) with partnering institutions, which shall define the programs and services to be provided by each party and provide for a fair and equitable distribution of tuition and formula revenue resources. At a minimum, each MOU must address the following issues:

(1) cost and revenue sharing arrangements;

(2) student credit hour reporting arrangements;

(3) accommodations for alternative delivery methods at the receive site;

(4) arrangements and responsibilities for evaluating the effectiveness of the joint venture;

(5) provision of student support services;

(6) provision of academic support services; and

(7) provision for termination in the event necessary.

G. Upon approval by the governing boards, all MOU's will be submitted to the department for its records and use in developing formula funding recommendations.

[5.2.4.9 NMAC - N, 05/01/07]

5.2.4.10 DISTRIBUTION OF REVENUES:

A. Revenues generated by programs offered within the GAR by the host institution shall belong to the host institution. The host institution may assess tuition and fees as necessary to cover the cost of all programs and services offered within the GAR, including appropriate surcharges for services provided outside of the institution's taxing district.

B. Distribution of revenues generated as a result of programs offered by a partner institution within the geographic area of responsibility of a host institution shall be divided between the institutions based on the MOU approved by the governing boards of the institutions.

[5.2.4.10 NMAC - N, 05/01/07]

5.2.4.11 IMPLEMENTATION OF POLICY: The department recognizes that implementation of this policy must recognize the current status of state-supported postsecondary educational services within newly-defined GARs.

A. The provisions of this policy do not apply to existing programs as defined in 5.2.4.7 NMAC. Existing programs offered within any GAR shall continue to be eligible for formula funding as provided in 5.3.12 NMAC.

B. A governing board has the authority to approve and offer a new competing program in a GAR to which their institution is not designated. However, the competing program will not receive state

formula funding support through the higher education funding formula.

C. The provisions of this policy do not apply to programs or courses delivered via instructional television or web-based instruction.

D. The provisions of this policy do not apply to tribal governments or schools which may broker educational services from any public or private postsecondary educational institution.

[5.2.4.11 NMAC - N, 05/01/07]

5.2.4.12 TEMPORARY PROVISION: Until such time as the department approves a network of GARs encompassing the entire state, the department maintains that each two-year institution's local taxing district shall constitute its GAR for the direct provision of lower division instruction, subject only to limitations imposed by its enabling legislation, and otherwise consistent with the provisions of this policy.

[5.2.4.12 NMAC - N, 05/01/07]

HISTORY OF 5.2.4 NMAC:
[RESERVED]

NEW MEXICO ORGANIC COMMODITY COMMISSION

This is an amendment to 21.15.1 NMAC, Section 11, effective March 30, 2007.

21.15.1.11 FEES AND ASSESSMENTS

A. Application fee: all applicants, regardless of category, must remit a \$175.00 application fee with the completed application. First time applicants shall also remit a \$25.00 set-up fee. Applications without accompanying fees shall be deemed incomplete and the applicant shall be notified that the application will not be further processed without the fee. Applicants applying for dual categories (crop and processor, animal and processor, but not crop and animal) must pay two fees, except where total annual gross sales of organic product are less than \$50,000.00 and all handling/processing is performed by the certified producer; in such cases only one fee will be required. Handling/processing applicants that provide a process or service to organic producers but do not take ownership of the organic product or do not sell an organic product shall remit a \$225.00 application fee. Annual update applications must also be accompanied by a \$175.00 fee payment. Annual update applications sent in after the announced due date will be subject to a late fees on the following scale: up to one month late \$75.00; one to two months \$100.00; two to three months

\$200.00; three months and later \$500.00.

B. All operations receiving certification from the commission must also remit annually by March 15 an assessment based on gross sales of organic products for the calendar year just ended. The commission shall send out a reminder notification of the assessment obligation in January. "Organic products" are defined as all products certified by the New Mexico organic commodity commission as "100 percent organic", "organic" or "made with organic (ingredients or food groups)".

(1) Producers, processors and handlers shall be assessed at a rate of one-half of one percent ($\frac{1}{2}$ percent) of total annual gross sales of organically produced agricultural products, except:

(2) As provided for in the Organic Commodity Act, at 76.22.16 (d), the commission may, following notice and comment, adjust the assessment rate up or down by no more than one hundred percent.

(3) Assessments shall be limited based on gross annual organic income as follows: sales ~~under \$1 million, \$3500.00; from \$1 million to \$2 million, \$5000.00; over \$2 million, \$10,000.00~~ between \$1 million and \$1.5 million at \$3,500; between \$1.5 million and \$2 million at \$5,500; and over \$2 million at \$10,000.

(4) As provided for in the Organic Commodity Act, at 76.22.17, the commission may authorize a supplemental assessment, which shall not exceed one-fourth of one percent ($\frac{1}{4}$ percent) of total annual gross sales of organically produced agricultural products.

C. Collection of assessments: all assessment shall be collected directly by the commission and shall be deposited into the organic market development fund.

[21.15.1.11 NMAC - Rp 21 NMAC 15.1.14, 8/30/2001; A, 8/15/2003; A, 3/15/2007; A, 3/30/2007]

NEW MEXICO PUBLIC REGULATION COMMISSION

Repealer: The New Mexico Public Regulation repeals its NMPSC Rule 570, "Governing Cogeneration and Small Power Production" (filed 06-30-1988). Effective date of Repeal: March 30, 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION

**TITLE 17 PUBLIC UTILITIES
AND UTILITY SERVICES
CHAPTER 9 ELECTRIC SER-**

VICES

PART 570 GOVERNING COGENERATION AND SMALL POWER PRODUCTION

17.9.570.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.

[17.9.570.1 NMAC - Rp, NMPSC Rule 570, 3-30-07]

17.9.570.2 SCOPE:

A. 17.9.570 NMAC applies to every electric utility (investor-owned, rural electric cooperative, municipal, or an entity providing wholesale rates and service) operating within the state of New Mexico that is subject to the jurisdiction of the New Mexico public regulation commission as provided by law.

B. It is intended that the obligations of utilities provided for in 17.9.570 NMAC, including those contained in Subsections A - F of 17.9.570.9 NMAC and Subsections A - D of 17.9.570.11 NMAC through Subsections A - G of 17.9.570.12 NMAC, shall extend to both production and consumption functions of qualifying facilities irrespective of whether the production and consumption functions are singly or separately owned. In situations where the production and consumption functions are separately owned, the qualifying facility or its operator may elect to enter into the contract with the utility.

C. All interconnection contracts between utilities and qualifying facilities existing at the time 17.9.570 NMAC is adopted shall automatically continue in full force and effect with no change in rates for the purchase of power from the qualifying facilities. Any changes made to the existing interconnection contracts shall be made by mutual agreement and shall conform to the provisions of 17.9.570 NMAC.

D. Variances which have been granted by the commission from earlier versions of General Order No. 37 and under NMPSC Rule 570 shall continue in full force and effect unless the commission specifically rescinds any such variance.

[17.9.570.2 NMAC - Rp, NMPSC Rule 570.2, 3-30-07]

**17.9.570.3 STATUTORY
AUTHORITY:** NMSA 1978, Sections 8-8-15, 62-6-4, 62-6-19, 62-6-24, and 62-8-2, and 16 USCA Section 2621.

[17.9.570.3 NMAC - N, 3-30-07]

17.9.570.4 DURATION:
Permanent.

[17.9.570.4 NMAC - N, 3-30-07]

17.9.570.5 EFFECTIVE DATE:
March 30, 2007, unless a later date is cited

at the end of a section. Applications filed prior to this effective date shall be governed by the specific orders related to those applications.

[17.9.570.5 NMAC - Rp, NMPSC Rule 570, 3-30-07]

17.9.570.6 OBJECTIVE:

A. 17.9.570 NMAC is to govern the purchase of power from and sale of power to qualifying facilities by:

(1) enabling the development of a market for the power produced by qualifying facilities,

(2) establishing guidelines for the calculation of utilities' avoided costs, and

(3) providing meaningful access to critical cost information from utilities.

B. 17.9.570 NMAC is intended to implement regulations of the federal energy regulatory commission, 18 C.F.R. Section 292, promulgated pursuant to the Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 (codified as amended starting at 16 U.S.C. Section 824) and the New Mexico Public Utility Act, NMSA 1978, Sections 62-3-1 et. seq., as amended.

[17.9.570.6 NMAC - Rp, NMPSC Rule 570.1, 3-30-07]

17.9.570.7 DEFINITIONS:

When used in 17.9.570 NMAC unless otherwise specified the following definitions will apply:

A. avoided costs means the incremental costs to the electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, the utility would generate itself or purchase from another source; avoided costs are the costs computed in accordance with Subsections A - D of 17.9.570.11 NMAC;

B. backup power means electric energy or capacity or both supplied by an electric utility during an unscheduled outage of the qualifying facility to replace energy ordinarily supplied by a qualifying facility's own generation equipment;

C. interconnection costs means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administration incurred by the electric utility which are directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations but instead generated an equivalent amount of power itself or purchased an equivalent amount of power from other sources; interconnection costs do not include any costs included in the calculation

of avoided costs;

D. interruptible power means power supplied by an electric utility subject to interruption by the electric utility under specified conditions;

E. maintenance power means power supplied by an electric utility during scheduled outages of the qualifying facility;

F. new capacity addition means the capacity added to a utility's resource mix after the effective date of 17.9.570 NMAC through normal utility resource procurement activities which shall include but not necessarily be limited to:

(1) construction of or participation in new generating facilities;

(2) augmenting the capacity of or extending the life of existing generating facilities through capital improvements, or

(3) entering into new contracts or exercising options in existing contracts which will result in additional capacity;

(4) new capacity addition does not include the following:

(a) renegotiation of existing contracts for anything other than increasing capacity in the resource mix;

(b) renegotiation of existing full power requirements contract between a distribution cooperative and its full power requirements supplier; and

(c) seasonal uprating in capacity achieved without any capital improvements to existing generating facilities;

G. power means electric energy or capacity or both;

H. qualifying facility means a cogeneration facility or a small power production facility which meets the criteria for qualification contained in 18 C.F.R. Section 292.203;

I. rate means any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale by the utility of power or purchase of power from the qualifying facility;

J. supplementary power means power which is regularly used by a consumer, supplied by the electric utility, in addition to that power which may be supplied by a qualifying facility;

K. system emergency means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property;

L. tariff means the document filed by a utility with the commission pursuant to 17.9.570 NMAC containing that utility's rules, regulations, practices, and forms authorized for use in service by the utility including the application form for interconnection referred to in Subsection C of 17.9.570.9 NMAC, the rates and other

terms for the purchase of energy referred to in Subsection B of 17.9.570.11 NMAC, the rates and services offered to support qualifying facilities referred to in Subsections A - G of 17.9.570.12 NMAC, and the interconnection and safety standards referred to in Subsection H of 17.9.570.12 NMAC.

[17.9.570.7 NMAC - Rp, NMPSC Rule 570.3, 3-30-07]

17.9.570.8 [RESERVED]

17.9.570.9 PROCEDURE FOR INTERCONNECTION:

A. General: Unless otherwise specifically provided for in the standard interconnection agreement referred to in Paragraph (2) of Subsection D of 17.9.570.9 NMAC, the procedures in Subsections B through F of 17.9.570.9 NMAC for applications for interconnection, contracts, and interconnections shall be followed.

B. Conditions of Interconnection: A utility shall interconnect with any cogenerator or small power producer which:

(1) is in its service area;

(2) is a qualifying facility;

(3) files a written notice to interconnect in accordance with 17.9.570 NMAC;

(4) meets the utility's system safety standards;

(5) has paid the estimated costs of interconnection (if applicable);

(6) has entered into a contract with the utility pursuant to Subsection D of 17.9.570.9 NMAC;

(7) has substantially completed a facility that is capable of operating safely and commencing the delivery of power into the utility system; and

(8) has provided a statement from a licensed professional electrical engineer certifying that the design of the qualifying facility and its interconnection equipment comply with utility requirements and with reasonable interconnection safety and design standards and prudent electrical practices.

C. Applications for Interconnection.

(1) Each utility shall develop and file a proposed form of application for interconnection as a part of its tariff filing required by 17.9.570 NMAC. A qualifying facility shall make its application for interconnection to a utility on the form of application for interconnection which shall be provided by the utility. A utility shall provide a blank form of application for interconnection within ten (10) days of a written request for such form. Such form of application shall provide for the submission by a qualifying facility of reasonable and adequate technical information and detail to

enable the utility to comply with its interconnection obligations.

(2) Unless a longer period of time is agreed to in writing by the qualifying facility, within thirty (30) days of receipt of a written application for interconnection a utility shall furnish to the qualifying facility a good faith, detailed list of required interconnection equipment and an itemized estimate of the costs that the qualifying facility will have to pay the utility for interconnection. Once the utility provides the qualifying facility with the list of required interconnection equipment the list shall not change substantially other than in response to changes in design, location of equipment, and/or intended operation of the equipment of the qualifying facility.

(3) If an application for interconnection fails to comply with the requirements in 17.9.570 NMAC or is otherwise insufficient, the utility shall attempt to obtain the required information to complete the application by telephone. If the utility cannot so obtain the complete information, the utility shall within fifteen (15) days of receipt of the application for interconnection notify the qualifying facility and the commission specifying the deficiencies in the application.

(4) If the qualifying facility disagrees with the utility's determination that the application for interconnection is insufficient, it may within fifteen (15) days of such notification initiate a proceeding before the commission pursuant to the complaint process of 17.9.570 NMAC wherein the utility shall respond and support its rejection. The utility shall have the burden to establish that the rejection was justified.

D. Contract.

(1) After receiving the estimated costs of interconnection the qualifying facility shall file a written notice with the utility of its intent to enter into a contract. Within thirty (30) days of receipt of such notice of intent to contract the utility shall offer a contract to the qualifying facility which complies with the terms and conditions of 17.9.570 NMAC. Any final terms and conditions shall be negotiated between the utility and the qualifying facility within thirty (30) days after submission of the contract unless otherwise agreed to in writing. If the parties are unable to reach agreement within the said thirty-day period, the qualifying facility may initiate a proceeding before the commission pursuant to the complaint process of 17.9.570 NMAC.

(2) Where the utility's avoided costs do not contain payment for capacity, the standard interconnection agreement for qualifying facilities with a design capacity of 100 kilowatts or less (included at 17.9.570.15 NMAC) shall be offered by the utility to any person wishing to interconnect

a qualifying facility of 100 kilowatts or less to the utility system. The utility shall substitute its name or acronym for the bracketed portions of the standard agreement, as appropriate. Should the small power producer refuse the standard agreement, negotiations may take place consistent with 17.9.570 NMAC. For qualifying facilities with a design capacity of over 100 kilowatts the contract shall be negotiated in accordance with the provisions of Paragraph (1) of Subsection D of 17.9.570.9 NMAC.

(3) When the utility's avoided costs contain payment for capacity, the utility and the qualifying facility should negotiate a contract in accordance with the provisions of Paragraph (1) of Subsection D of 17.9.570.9 NMAC.

(4) If the qualifying facility desires to sell its power to a utility other than the utility in whose service territory the qualifying facility is located, the qualifying facility may negotiate whatever arrangements it can with the second utility under 17.9.570 NMAC provided that the first utility agrees in writing that it will wheel the qualifying facility's power to the second utility.

(5) The qualifying facility and the utility must coordinate the maintenance schedule of the qualifying facility. Any disputes concerning the establishment of the maintenance schedule shall be submitted to the commission pursuant to the complaint process of 17.9.570 NMAC.

(6) All qualifying facilities are strongly urged to obtain liability insurance to cover risks, liabilities, and consequences which may arise as a result of interconnection with a utility system. A utility may require qualifying facilities larger than 50 kW to obtain general liability insurance not to exceed \$1,000,000 before the qualifying facility starts actual operation. In extraordinary cases and for good cause shown the commission may require a qualifying facility to obtain a greater amount of general liability insurance.

E. Interconnection and Operation.

(1) The qualifying facility shall give the utility at least sixty (60) days' written advance notice to interconnect. Such notice shall specify the date the qualifying facility will be ready for interconnection, the date the qualifying facility will be able to commence testing of the facility, and the date the qualifying facility anticipates operation after testing. The qualifying facility shall pay the estimated costs of interconnection in full at the time the notice to interconnect is given. The utility shall pay a qualifying facility for any energy produced during testing of the facility at the appropriate energy rate pursuant to Subsection B of 17.9.570.11 NMAC.

(2) If the utility determines that it cannot interconnect the qualifying facility within the time set in the notice to interconnect because adequate interconnection facilities are not available, it shall within fifteen (15) days of receipt of the notice to interconnect notify the qualifying facility and the commission specifying the reasons it cannot interconnect as requested by the qualifying facility and specifying the date interconnection can be made. If the qualifying facility objects to the date for interconnection specified by the utility, objects to the utility's determination that adequate interconnection facilities are not available, or disputes the good faith efforts of the utility to interconnect, the qualifying facility may initiate a proceeding before the commission pursuant to the complaint process of 17.9.570 NMAC, and the utility shall respond and support its position. If the commission finds that the utility's position on the time for interconnection or unavailability of interconnection facilities was not justified, the qualifying facility shall be deemed to have been interconnected and otherwise complied with its contractual duties on the sixtieth (60th) day following the notice to interconnect and payments by the utility to the qualifying facility shall commence at the appropriate power rate which shall be applied to the amount of imputed or expected power as if the qualifying facility were producing, provided that the qualifying facility's power was available.

F. Costs of Interconnection. Payment for all costs of interconnection (determined in accordance with the definition of "interconnection costs" in 17.9.570.7 NMAC shall be the responsibility of the owner or operator of the qualifying facility. If the utility incurs any of the costs of interconnection, the qualifying facility shall reimburse the utility for such costs. The estimated costs for interconnection referred to in Paragraph (2) of Subsection C of 17.9.570.9 NMAC hereof shall be paid prior to interconnection. Upon completion of the interconnection the actual costs of interconnection shall be determined in a verifiable form by the utility, and any actual costs in excess of the estimated costs shall be paid by the qualifying facility to the utility within thirty (30) days. If the estimated costs exceed actual costs the utility shall refund the difference to the qualifying facility within thirty (30) days.

G. Obligation to Purchase. Each utility shall purchase power from a qualifying facility from the date of interconnection at the utility's avoided cost. An electric utility is obligated to purchase power from a qualifying facility at the utility's avoided cost regardless of whether the electric utility making such purchase is

simultaneously selling power to the qualifying facility.

[17.9.570.9 NMAC - Rp, NMPSC Rule 570.4-10, 3-30-07]

17.9.570.10 M E T E R I N G OPTIONS:

A. General.

(1) A qualifying facility contracting to provide power may displace its own load. The utility may require appropriate metering. Billing for any power from the utility will be at the utility's approved rate applicable to the service provided to the qualifying facility in accordance with Subsections A - G of 17.9.570.12 NMAC.

(2) The tariff filed by each utility pursuant to Subsection H of 17.9.570.13 NMAC shall include the offer to any qualifying facility that has not contracted to receive capacity payments, the metering options in Subsections B, C and D of 17.9.570.10 NMAC.

(3) The options of Subsections B, C and D of 17.9.570.10 NMAC may involve time-of-day metering if the utility has in effect time-differentiated rates and metering for the class of customer to which the qualifying facility belongs or if the parties negotiate time-differentiated payments to the qualifying facility.

B. Load Displacement Option. If the qualifying facility wishes primarily to serve its own load, the utility shall agree to interconnect with a single meter or meter set measuring flow from the utility to the qualifying facility; billing for any power from the utility will be at the utility's approved tariff applicable to the service provided to the qualifying facility; there will be no additional customer charge and no payment by the utility for any excess energy which might be generated by the qualifying facility.

C. Net Metering Option.

(1) The utility shall install the metering necessary to determine the net energy delivered from the qualifying facility to the utility or from the utility to the qualifying facility for each time-of-use or single rate period, as applicable, during a billing period; the net energy delivered to either the qualifying facility or to the utility is the difference between the energy produced by the qualifying facility's generation and the energy that would have otherwise been supplied by the utility to the qualifying facility absent the qualifying facility's generation.

(2) The net energy delivered from the qualifying facility to the utility shall be purchased by the utility at the utility's applicable time-of-use or single period energy rate as described in Subsection B of 17.9.570.11 NMAC; the qualifying facility shall be billed for the net energy delivered from the utility in accordance with the tar-

iffs that are applicable to the qualifying facility absent the qualifying facility's generation; the qualifying facility shall also be billed for all demand and other charges in accordance with the applicable tariffs. At the end of the billing period the utility shall net all charges owed to the utility by the qualifying facility and all payments owed by the utility to the qualifying facility. If a net amount is owed to the qualifying facility for the billing period, and is less than \$50, the payment amount may be carried over to the following billing period. If a net amount is owed to the qualifying facility and is \$50 or more, the utility shall make payment to the qualifying facility prior to the end of the next billing period.

(3) If provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, the qualifying facility shall pay all incremental costs associated with installing the more costly metering equipment and facilities. An additional customer charge to cover the added costs of billing and administration may be included in the tariff if supported with evidence of need for such charge.

D. Separate Load Metering (simultaneous buy/sell) Option. The utility shall install the metering necessary to determine separately 1) all the energy produced by the qualifying facility's generator and 2) all of the power consumed by the qualifying facility's loads; the utility shall purchase all energy produced by the qualifying facility's generator at the utility's applicable time-of-use or single period energy rate as described in Subsection B of 17.9.570.11 NMAC. The qualifying facility shall purchase all power consumed at its normally applicable rate; an additional customer charge to cover the added costs of billing and administration may be included in the tariff if supported with evidence of need for such charge.

E. Metering Configurations. Metering configurations used to implement the provisions of 17.9.570 NMAC shall be reasonable, nondiscriminatory, and shall not discourage cogeneration or small power production.

[17.9.570.10 NMAC - Rp, NMPSC Rule 570.11-15, 3-30-07]

17.9.570.11 DETERMINATION OF RATES FOR PURCHASES FROM QUALIFYING FACILITIES:

A. General. A utility shall pay a qualifying facility avoided costs for power purchased from the qualifying facility. Avoided costs are defined in Subsection A of 17.9.570.7 NMAC. The energy rate represents avoided energy costs for the purposes of 17.9.570 NMAC. The energy rate and the avoided capacity costs to be paid to

the qualifying facility for the power it sells to the utility shall be developed pursuant to Subsections B and C of 17.9.570.11 NMAC, respectively.

B. Energy Rate. The energy rate to be paid for the energy supplied by the qualifying facility in any month shall be that respective month's rate from the utility's current schedule on file with the commission. Each utility shall file with the commission its schedule containing monthly energy rates that will be applicable to the next twelve-month period. These monthly energy rates shall be listed for each voltage level of interconnection and shall be expressed in cents/kWh. Each month's energy rate contained in the schedule shall be the average of the economy energy purchases by the utility for the corresponding month of the immediately preceding twelve-month period. In the event a utility does not engage in economy energy purchases in any given month, the energy rate to be included in its schedule for that month shall be either: the monthly average of hourly incremental energy costs including variable operation and maintenance expenses for generating utilities, or the energy charge of the highest energy cost contract as adjusted for appropriate retail fuel and purchase power pass through for nongenerating utilities.

(1) In addition to the schedule described above, those utilities with retail time-of-use rates on file with the commission shall file schedules reflecting monthly energy rates calculated for peak periods only and off-peak periods only which shall be applied to qualifying facilities whose generation is limited to peak periods only or off-peak periods only. Peak and off-peak periods shall be as defined in the utility's retail tariffs on file with the commission.

(2) Within sixty (60) days of the effective date of 17.9.570 NMAC each electric utility subject to the rule shall file with the commission the schedule containing rates to be offered along with detailed supporting workpapers showing the input data and calculations. After the first submittal each utility shall update its filing within thirty (30) days from the last day of its fiscal year.

(3) Variable operation and maintenance rates used for the above computations shall be the basis for requested variable operation and maintenance rates in the utility's future rate cases.

(4) The schedules containing energy rates developed pursuant to Subsections A - D of 17.9.570.11 NMAC shall be part of the tariff to be filed pursuant to Subsection H of 17.9.570.13 NMAC. The energy rate contained in the schedules shall include the savings attributable to the avoidance of losses due to transmission, distribution, and transformation as applica-

ble for different voltage levels of interconnection. These transmission, distribution, and transformation loss avoidance savings for different voltage levels of interconnection shall be obtained from the utility's filing in the last commission-decided rate case, and those figures shall be shown in the utility's submittal.

C. Avoided Capacity Costs.

(1) A qualifying facility is entitled to receive payments for capacity when such capacity purchase by the utility from the qualifying facility enables the utility to avoid procurement of new capacity. The avoided capacity costs of a utility will be determined by the commission on a case-by-case basis based on the costs associated with a "new capacity addition" for the utility.

(2) Within sixty (60) days of the effective date of 17.9.570 NMAC each utility subject to the provisions of 17.9.570 NMAC shall file a schedule with the commission showing capacity, capital costs, and fixed operation, maintenance, and demand charges, as applicable, of the existing capacity resources by generating unit and by contract. After the first submittal each utility shall update its filing within thirty (30) days from the last day of every fiscal year. Utilities transferring their purchase obligation pursuant to Subsection F of 17.9.570.13 NMAC need not file this schedule. A utility which has obtained a limited variance from the provisions of Subsection F shall note that the variance obtained applies to qualifying facilities contracting to supply energy only. Each utility subject to the provisions of 17.9.570 NMAC shall notify the commission of any planned "new capacity addition" with relevant details on timing, size, capital costs, fixed operation and maintenance costs, property taxes, insurance, energy costs, variable operation and maintenance costs, and capital carrying costs if the "new capacity addition" is to be made by the utility's own generation. If the "new capacity addition" is made by a power sales agreement or other such agreement, the utility shall give the relevant details of the transaction such as demand and energy charges and term of the agreement. Notification to the commission shall be made as soon as possible after the utility's decision but in no case later than one (1) year prior to the date of a "new capacity addition". Failure to provide adequate notice may result in the utility being unable to recover the costs of the "new capacity addition" in rates even if such an addition meets all the other regulatory criteria for recoverability.

(3) Based on the information contained in the utility's notification and subject to a hearing thereon, the commission will determine the avoided capacity costs

for that utility. The utility shall be obligated to make payments for capacity only up to the amount of capacity associated with the "new capacity addition."

D. Negotiations. Notwithstanding the provisions of 17.9.570 NMAC, a utility and qualifying facility may at the qualifying facility's option negotiate rates for the power to be supplied by the qualifying facility. Such negotiated rates shall be filed with the commission within thirty (30) days of the execution of the contract. The contract shall not contain any rate which is higher than the utility's avoided costs as defined in 17.9.570 NMAC. [17.9.570.11 NMAC - Rp, NMPS Rule 570, 3-30-07]

17.9.570.12 OBLIGATION TO SELL:

A. Rates to be Offered. Utilities are required to provide supplementary power, backup power, maintenance power, and interruptible power to qualifying facilities irrespective of whether the production and consumption functions of the qualifying facility are singly or separately owned. The rates for supplementary power, backup power, maintenance power, and interruptible power shall be calculated as provided for in Subsections A - G of 17.9.570.12 NMAC and included in the tariff for each utility to be filed pursuant to 17.9.570 NMAC. Utilities may charge a facilities fee for equipment dedicated to the customer pursuant to the utility's rate schedules and rules governing the utility's practices for recovering such costs. The computation of the facilities fee shall take into account the costs of facilities already paid for by the customer before installing a qualifying facility.

B. Supplementary Power.
 (1) Qualifying facilities shall be entitled to supplementary power under the same retail rate schedules that would be applicable to those retail customers having power requirements equal to the supplementary power requirements of the qualifying facility. Any, ratchet enforced through the "billing demand" provisions of such retail schedules shall also apply.

(2) To determine the amount of supplementary power required, supplementary power shall be measured to each qualifying facility through appropriate metering devices which are adequate to determine whether supplementary or backup power is being utilized. The demand interval used shall be the same as that contained in the applicable retail rate schedule.

C. Backup Power.
 (1) Qualifying facilities shall be entitled to backup power for forced outages under the same retail rate which would be applicable absent its qualifying facility generation. Rates for sale of backup power

shall not contain demand charges in time periods when demand charges are not applicable to such retail rate schedule. Rates for backup power shall not contain demand ratchets or power factor penalties. If the utility can demonstrate that a particular qualifying facility has caused either a demand ratchet or a power factor penalty clause between the utility and its power supplier(s) to be invoked because of the qualifying facility's operation, the utility may petition the commission to allow the allocable charges resulting from the demand ratchet or power factor penalty which has been invoked to be included in the rates for that particular qualifying facility.

(2) In the months that backup power is not utilized by the qualifying facility the rates for backup power may contain a monthly reservation fee which shall not exceed ten percent (10%) of the monthly demand charge contained in the retail rate schedule which would be applicable to the consumer absent its qualifying facility generation. Such a reservation fee shall not be charged while a qualifying facility is taking backup power or while charges resulting from a power factor penalty and/or demand ratchet have/has been imposed pursuant to Paragraph (1) of Subsection C of 17.9.570.12 NMAC.

D. Maintenance Power.
 (1) Maintenance power shall be provided to qualifying facilities for periods of maintenance scheduled in advance with the concurrence of the utility. A qualifying facility shall schedule such maintenance with the utility by giving the utility advance notice dependent on the length of the outage as follows:

<u>Length of Outage*</u>	<u>Advance Notice*</u>
1 day	5 days
2 to 5 days	30 days
6 to 30 days	90 days
*All days are calendar days.	

(2) Maintenance power rates shall be the same as the retail rate which would be applicable to the qualifying facility absent its qualifying facility generation. The maintenance power demand charge shall be determined by multiplying the applicable retail demand charge by the ratio of the number of weekdays in which the maintenance power was taken to the number of weekdays in the month. No demand charge shall apply for maintenance power taken during off-peak hours as defined in the utility's retail tariffs. For those utilities which do not have time-of-use rates, off-peak hours are defined as 11:00 p.m. to 7:00 a.m. weekdays, twenty-four (24) hours per day on weekends and holidays.

(3) Maintenance power shall be available to qualifying facilities for a mini-

imum period of thirty (30) days per year scheduled outside of the system peak period of the utility which is defined as the three-month period covering the peak month together with the preceding and succeeding months.

E. Interruptible Power.

All utilities shall file rates for interruptible power which shall be available to qualifying facilities. Rates for such interruptible power purchases shall reflect the lower costs, if any, which the utility incurs in order to provide interruptible power as opposed to what it would incur to provide firm power.

F. Customer Charges.

The customer charges from a utility for a qualifying facility shall be the same as the retail rate applicable to the customers in the same rate class absent its qualifying facility generation.

G. Exceptions.

An electric utility shall not be required to provide supplementary power, backup power, maintenance power, or interruptible power to a qualifying facility if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the commission finds that provision of such power would:

(1) impair the electric utility's ability to render adequate service to its customers; or

(2) place an undue burden on the utility.

H. Interconnection and Safety Requirements.

(1) Each utility shall develop and file with the commission proposed general safety standards governing the installation, operation, and maintenance of the protective equipment required to integrate qualifying facilities into the utility's electric system (if any such equipment is required). These general safety standards may contain reasonable provisions for case-by-case standards for certain qualifying facilities based on their size and/or location. These standards shall be reasonable and nondiscriminatory and shall be designed to assure system and personnel safety.

(2) Nothing in 17.9.570 NMAC shall be construed to preclude a utility from evaluating each request for interconnection on its own merits and requesting and obtaining a variance from the commission which would modify the general standards developed pursuant Subsection H of 17.9.570.12 NMAC to reflect the result of such an evaluation.

(3) The qualifying facility's output to the utility will meet the following interconnection standards.

(a) The voltage will be that voltage normally available on the utility system at the qualifying facility's site or such other standard voltage as may be agreed to by the

qualifying facility and utility. These voltages are covered by A.N.S.I. standards.

(b) The frequency will be 60 hertz.

(c) The number of phases of the produced voltage will be compatible with the phases available on the utility system at the qualifying facility site. Normally the number of phases shall be the same as those of the utility system.

(d) When the output of the qualifying facility is single phase, connection to the utility's system shall only be allowed if the output does not result in an unacceptable current imbalance. If the output of the qualifying facility is single phase and connected to the secondary side of a single phase service distribution transformer, the output capacity of the qualifying facility shall not exceed ten (10) kVA.

(e) The protective devices connected between the output of the qualifying facility and the utility system must be rated for the maximum available fault current which the utility's system may be capable of developing at the point of interconnection. Such devices shall disconnect the qualifying facility's generation from the utility's system in the event of a fault on the system belonging to the qualifying facility in order to maintain continuity of service to other customers connected to the secondary of the distribution transformer or other portions of the utility's system.

(f) Recognizing that voltage quality varies widely on various distribution systems, the qualifying facility generator output shall not affect the utility's distribution system. This includes but is not limited to:

(i) overload of distribution equipment;

(ii) abnormal harmonic currents or voltages;

(iii) interference with automatic voltage regulation equipment; and

(iv) electronic noise that would interfere with communications.

(g) The system of the qualifying facility shall be capable of protecting itself from damage resulting from impact loading and/or overloading under both normal operating conditions and emergency conditions.

(4) This shall include the ability to synchronize on connecting to the utility system to avoid voltage decay or out-of-phase connection. The controls of the qualifying facility shall be capable of disconnecting the qualifying facility's output to the utility or otherwise limiting the qualifying facility's input to avoid overload of any of the utility system components or undesirable transient voltage or frequency fluctuations in the event of a fault on the utility's system or under conditions of large motor start or capacitor switching operations on

the utility system to which qualifying facility is interconnected. These devices must be coordinated with the utility's protective system. The qualifying facility must meet the following safety standards.

(a) The qualifying facility's interconnection must meet the requirements of the national electrical safety code, national electrical code, and the state of New Mexico electrical code.

(b) The qualifying facility's interconnection must automatically disconnect from the utility's system if the utility service is interrupted. The qualifying facility will coordinate automatic reenergization in the utility's system with the utility's standard protection practices. The utility may discontinue service to or from a qualifying facility if it has been determined that continuation of service would contribute to such emergency.

(c) There must be a load break disconnect between the qualifying facility's interconnection and the utility which can be controlled and operated by the utility. Where the qualifying facility is a customer of the utility, the disconnect or disconnects shall disconnect the qualifying facility's generator output without interrupting utility service to the customer's other load unless otherwise agreed. This disconnect must provide a visible air gap which will assure disconnection of the qualifying facility before a utility employee does any work on the circuit or circuits to which the interconnection is made. The meter socket or secondary connection compartment or bus compartment may be provided by the utility or provision may be required of the qualifying facility as is presently provided for in the case of each component by the rules and regulations filed with the commission in the case of the specific utility. In any event the capacity and the connection arrangements of the specific device must be approved by the utility if the qualifying facility is required to provide the device. (Note: where a device is now provided by a customer under the filed rules and regulations of a utility, standard drawings or a list of approved devices are normally available from the utility.)

[17.9.570.12 NMAC - Rp, NMPSC Rule 570.20-28, 3-30-07]

17.9.570.13 PERIODS WHEN PURCHASES AND SALES ARE NOT REQUIRED:

A. System Emergencies.

(1) During any system emergency a utility may discontinue on a nondiscriminatory basis:

(a) purchases from a qualifying facility if such purchases would contribute to such emergency, and

(b) sales to a qualifying facility provided that such discontinuance is on a

previously established nondiscriminatory basis.

(2) A qualifying facility shall be required to provide power to a utility during a system emergency only to the extent:

(a) provided by agreement between the qualifying facility and the utility; or

(b) ordered pursuant to the provisions of the Federal Power Act, 16 U.S.C. Section 824a(c).

B. Operational Circumstances. The utility may discontinue purchases from the qualifying facility during any period in which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases but instead generated an equivalent amount of energy itself; a claim by an electric utility that such a period has occurred or will occur is subject to verification by the commission; the utility shall maintain and make available sufficient documentation to aid the commission with verification proceedings.

C. Notification Requirements. Any utility which disconnects and thereby discontinues purchases or sales from a qualifying facility for the reasons cited in Subsections A and B of 17.9.570.13 NMAC above shall notify the qualifying facility or facilities prior to the system emergency or operational circumstance if reasonably possible. If prior notice is not reasonably possible the utility shall notify the qualifying facility by telephone or personal contact within forty-eight (48) hours following the system emergency or operational circumstance followed by written communication if requested by the qualifying facility. Any notification shall include the specific reason for the system emergency or operational circumstance.

D. Penalty. Any utility which fails to comply with the notification requirements in Subsection C of 17.9.570.13 NMAC or fails to demonstrate the existence of a system emergency or operational circumstance which warrants the discontinuance of purchases shall pay for the qualifying facility's imputed or expected power at the applicable rate as if the system emergency or operational circumstance had not occurred. The utility may also be subject to a penalty under NMSA 1978, Section 62-12-4 as amended.

E. Wheeling of Power. If the qualifying facility agrees, an electric utility which would otherwise be obligated to purchase power from the qualifying facility may transmit power to any other electric utility. Any electric utility to which power is transmitted shall purchase such power as if the qualifying facility were supplying power directly to such electric utility. The

rate for purchase by the electric utility to which such power is transmitted shall be adjusted up or down to reflect line losses pursuant to 18 C.F.R. Section 292.304(e)(4) and shall not include any charges for transmission.

F. Distribution Cooperatives.

(1) A distribution cooperative having a full power requirements contract with its supplier has the option of transferring the purchase obligation pursuant to Subsection G of 17.9.570.9 NMAC to its power supplier. The qualifying facility will be paid the capacity and energy payments, as applicable, by the supplier pursuant to Subsections A through D of 17.9.570.11. A distribution cooperative that does not transfer the purchase obligation to its power supplier shall have the option to:

(a) pay qualifying facilities the energy and/or capacity charges including appropriate fuel and purchase power pass-throughs it pays to its power supplier, or

(b) pay the qualifying facility the energy and/or capacity charges which shall be determined in accordance with Subsections A through D of 17.9.570.11 NMAC.

(2) The obligation to interconnect and provide supplementary, backup, and maintenance power either on a firm or on an interruptible basis shall remain with the distribution cooperative.

(3) Any municipal electric utility that does not have generating capacity but is subject to the jurisdiction of the commission shall be considered a distribution cooperative for the purposes of 17.9.570 NMAC.

G. Requirements to File Electric Utility System Data: not later than April 1 of each year each utility shall submit to the commission a report covering the previous calendar year which shall at a minimum provide:

(1) the name and address of each qualifying facility with which it is interconnected, with which it has a contract to interconnect, or with which it has concluded a wheeling agreement;

(2) annual purchases in kW and kWh from each qualifying facility with which it is interconnected and the amount of electricity wheeled on behalf of each qualifying facility;

(3) the price charged for any power wheeled on behalf of each qualifying facility;

(4) the methodology and assumptions used in the calculation of wheeling rates;

(5) amounts actually paid to each qualifying facility; and

(6) a list of all applications for interconnection which the utility has rejected or otherwise failed to approve together

with the reasons therefor.

H. Filing of Tariff. Within sixty (60) days of the adoption of this rule, each utility shall develop and file any changes to its tariffs on file with the commission needed to comply with the requirements set forth herein; such changes shall comply with all tariff filing requirements of the commission; such tariffs shall conform to the requirements 17.1.210 NMAC, and shall become effective thirty (30) days after the filing thereof unless suspended by the commission pursuant to NMSA 1978, Section 62-8-7 as amended, or unless ordered effective at an earlier date by the commission.

I. Complaints and Investigations. The procedures set forth in NMSA 1978, Sections 62-8-7 and 62-10-1 as amended, and the complaint provisions of 17.1.2.18 NMAC shall be applicable for the resolution of complaints and investigations arising out of the implementation and conduct of 17.9.570 NMAC.

J. Severability. If any part of 17.9.570 NMAC or any application thereof is held invalid, the remainder or the application thereof to other situations or persons shall not be affected.

K. Amendment. The adoption of 17.9.570 NMAC shall in no way preclude the commission, after notice and hearing, from altering or amending any provision hereof or from making any modification with respect to its application deemed necessary.

L. Exemption or Variance.

(1) Any interested person may file an application for an exemption or a variance from the requirements of 17.9.570 NMAC. Such application shall:

(a) describe the situation which necessitates the exemption or variance;

(b) set out the effect of complying with 17.9.570 NMAC on the utility and its customers if the exemption or variance is not granted;

(c) identify the section(s) of 17.9.570 NMAC for which the exemption or variance is requested;

(d) define the result which the request will have if granted;

(e) state how the exemption or variance will promote the achievement of the purposes of 17.9.570 NMAC; and

(f) state why no other reasonable alternative is available.

(2) If the commission determines that the exemption or variance is consistent with the purposes of the rule as defined herein, the exemption or variance may be granted. The commission may at its option require an informal conference or formal evidentiary hearing prior to the granting of the variance.

M. Motion for Stay

Pending Amendment, Exemption, or Variance. An application for an amendment, exemption, or a variance may include a motion that the commission stay the application of the affected portion of 17.9.570 NMAC for the transaction specified in the motion.

[17.9.570.13 NMAC - Rp, NMPS Rule 570.28-40, 3-30-07]

17.9.570.14 [RESERVED]

17.9.570.15 STANDARD INTERCONNECTION AGREEMENT FOR QUALIFYING FACILITIES WITH A DESIGN CAPACITY OF 100 KILOWATTS OR LESS:

A. Preamble.

(1) This AGREEMENT is made as of the ____ day of ____, 200_, by and between a _____ partnership [a single person] [husband and wife] (“producer”) and _____ ([utility], [Tri-State]) hereinafter referred to collectively as “parties” and singularly as “party”;

(2) WHEREAS, the producer receives electric service from [utility];

(3) WHEREAS, the producer receives electric service from _____ Electric Cooperative, Inc. (“distribution cooperative”), which is a member of Tri-State, receives its full requirements wholesale electric service from Tri-State and has retained all rights and obligations concerning continued electric service to the producer;

(4) WHEREAS, [utility] [Tri-State] is subject to the [limited] jurisdiction of the New Mexico public regulation commission (“NMPRC”), and [utility] [Tri-State] desires to [purchase] [accept] and the producer desires to [sell] [provide] all the electric energy produced by the Qualifying Facility (“QF”) that is not consumed by the producer, and the NMPRC has adopted 17.9.570 NMAC governing this transaction and [utility] [Tri-State] [Distribution Cooperative] has filed its tariff thereunder, a copy of which is annexed hereto and incorporated herein by reference and is subject to change by the NMPRC; and

(5) WHEREAS, the producer represents and warrants that the facility is a QF as defined by 17.9.570 NMAC having an installed capacity of 100 kilowatts or less.

(6) NOW, THEREFORE, for and in consideration of the mutual undertakings herein contained and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the producer and [utility] [Tri-State] agree as follows:

B. Definitions. Whenever used in the agreement, the following words and phrases shall have the following meanings:

(1) **agreement** shall mean this

agreement and all schedules, tariffs, attachments, exhibits, and appendices attached hereto and incorporated herein by reference;

(2) **interconnection facilities** shall mean all machinery, equipment, and fixtures required to be installed solely to interconnect and deliver power from the QF to the utility’s system, including, but not limited to, connection, transformation, switching, metering, relaying, line and safety equipment and shall include all necessary additions to, and reinforcements of, the utility’s system;

(3) **prudent electrical practices** shall mean those practices, methods and equipment, as changed from time to time, that are commonly used in prudent electrical engineering and operations to operate electric equipment lawfully, and with safety, dependability, efficiency and economy;

(4) **qualifying facility (QF)** means a cogeneration facility or a small power production facility of an installed capacity of 100 kilowatts or less which meets the criteria for qualification contained in 18 C.F.R. Section 292.203;

(5) **interconnection costs** means those costs set forth in Subsection C of 17.9.570 NMAC;

(6) **point of delivery** means the geographical and physical location described on exhibit B hereto; such exhibit depicts the location of the QF’s side of interconnection facilities where producer is to [sell and] deliver electric energy pursuant to this agreement or pursuant to a separate wheeling agreement;

(7) **termination** means termination of this agreement and the rights and obligations of the parties under this agreement, except as otherwise provided for in this agreement;

(8) **suspension** means suspension of the obligation of [the utility] [Tri-State] [Tri-State and/or the distribution cooperative] to interconnect with and purchase electricity from the producer.

C. Facilities to be Provided.

(1) Unless otherwise provided for herein, [utility] [Tri-State] will [purchase] [accept] and the producer will [sell] [provide] all the electric energy produced by the QF that is not consumed by the producer. Upon execution of this agreement, the producer shall, at its expense, design, construct, install, operate, and maintain to and at the point of delivery the QF which is described in exhibit A, attached hereto and hereby incorporated by reference.

(2) The point of delivery shall be located as described on exhibit B, attached hereto and hereby incorporated by reference, which shall include the following information:

_____.

(3) The OF shall meet all applicable federal, state and local code, all provisions of the national electrical code and the national electrical safety code, as such codes now exist, and all prudent electrical practices.

(4) The producer shall submit all specifications and drawings of its proposed QF to [utility] [Tri-State] for tentative written approval prior to connecting the OF to the [utility’s] [Distribution Cooperative’s] system. [utility’s] [Tri-State’s] review of the producer’s specifications and drawings be provided within a reasonable time.

(5) Tentative approval shall not be construed as permission to operate the facilities without written authorization from [utility] [Tri-State] after inspection of the completed facilities.

(6) Within 60 days of the execution of this agreement and receipt of necessary rights-of-way, easements and materials, unless such period is extended by the NMPRC, [utility] [Tri-State] shall design, construct, install, operate, and maintain the interconnection facilities described on exhibit C, attached hereto and hereby incorporated by reference. The producer shall reimburse _____ for all costs incurred by _____ for interconnection costs, an estimate of which costs is set out on exhibit C attached hereto. Terms of reimbursement shall be _____.

(7) The producer shall furnish, install and maintain a clearly labeled load break disconnect switch in a visible outside, readily accessible location for the purpose of isolating Producer’s generation from the [Utility’s] [distribution cooperatives] [Tri-State’s] system. The load break disconnect switch must disconnect the producer’s generator from the [utility’s] [Tri-State’s] [distribution cooperative’s] system without interrupting other types of service to the producer. The producer shall provide a map of suitable scale showing the exact location of the switch. Such map shall be included in exhibit B attached hereto and incorporated herein by reference. The switch shall be a securable type switch. Ingress and egress to this switch by [utility] [Tri-State’s] [Tri-State’s or Distribution Cooperative’s] personnel shall be provided at all times by the producer. The load break disconnect switch must comply with the Interconnection and Safety Standards attached as exhibit D hereto and incorporated herein by reference.

(8) [Utility’s] [Tri-State’s] review of the producer’s specifications, drawings and maps, inspection of or authorization to operate the QF or approval of any modification thereto shall be construed neither as its confirmation or endorsement of the design of QF nor as an endorsement, warranty, guarantee or representation concerning the safety, operating characteristics, durability or reliability of the QF. Notwithstanding

such review, inspection, authorization or approval, or the failure to make the same, [Utility] [Tri-State and/or the distribution cooperative] shall not be responsible or liable for the strength, details of design, defects, outages, adequacy, operation or capacity of the QF to producer or any third party[ies].

D. Term of Agreement.

The original term of this agreement shall be for a period of five (5) years from the date of the execution of this agreement and shall continue thereafter from year to year until terminated as herein provided.

(1) Termination by the Producer.

Termination of this agreement during and after the original term requires written notice to [the utility], [Tri-State and/or the distribution cooperative] that this agreement will terminate in ninety (90) days. The producer may terminate this agreement without showing good cause.

(2) Termination by [the utility], [Tri-State], [the distribution cooperative]. Termination of this agreement during and after the original term requires written notice to the producer that this agreement will terminate in ninety (90) days, unless otherwise provided. [The utility], [Tri-State], [the distribution cooperative], in the exercise of this right, must show good cause for the termination. Good cause shall include, but is not limited to, the specific provisions contained in Paragraphs (3) and (4) of Subsection D of 17.9.570.15 NMAC and Subsection M of 17.9.570.15 NMAC.

(3) At any time the QF is sold, leased, assigned, or otherwise transferred, the seller or lessor of the QF shall notify [utility] [Tri-State] and this agreement may be terminated at [utility's] [Tri-State's] option regardless of whether such transfer occurs during the original term or any renewal thereof. Such termination may be 'made with five (5) days written notice by [utility] [Tri-State].

(4) Should the producer default in the performance of any of the producer's obligations hereunder, [utility] [Tri-State] may suspend interconnection, purchases, or both and if the default continues for more than 90 days after written notice by [utility] [Tri-State] to the producer, [utility] [Tri-State] may terminate this agreement. Termination or suspension shall not affect the obligation of [utility] [Tri-State] to pay for energy already delivered or of the producer to reimburse interconnection costs, or any cost then accrued. Upon termination, all amounts owed to [Utility] [Tri-State] will become payable immediately.

E. Easements and Right-of-Way.

(1) The producer hereby agrees to grant at no expense to [utility] [Tri-State and the Distribution Cooperative], all ease-

ments and rights-of-way necessary for [Tri-State and the distribution cooperative] [utility] to install, operate, maintain, replace, and remove [Tri-State's and the distribution cooperative's] [utility's] metering and interconnection facilities, including, but not limited to, adequate and continuous access rights to property owned by the producer.

(2) The producer agrees to execute and deliver all documents [utility] [Tri-State] shall deem necessary to enable [utility] [Tri-State] to obtain and record such easements and rights-of-way.

(3) If any part of the interconnection facilities is to be installed on property owned by any person who is not a party to this agreement, the producer shall, at its expense, obtain from the owner of such property in the name of [utility] [Tri-State] [Tri-State and/or the distribution cooperative] [Tri-State and the distribution cooperative], and in a form satisfactory to [utility] [Tri-State] [Tri-State and/or distribution cooperative] [Tri-State and the distribution cooperative], all necessary easements and rights-of-way for [utility] [Tri-State] [Tri-State and/or the distribution cooperative] [Tri-State and the distribution cooperative] to install, operate, maintain, replace, and remove the interconnection facilities.

(4) [Utility] [Tri-State] shall have no duty or responsibility to acquire any easements or rights-of-way necessary to connect the OF to [utility's] [Tri-State's] [distribution cooperative] system. If necessary easements and rights-of-way are not obtained on terms agreeable to [utility] [Tri-State] [Tri-State and the distribution cooperative], this agreement may be terminated by [utility] [Tri-State] by giving written notice of such intention to the producer within a reasonable time from the date of this agreement.

F. Meter Installation. The producer will be metered by a meter or meters as determined by [utility] [Tri-State]. [Utility] [Tri-State] may install, at its option and expense, magnetic tape recorders in order to obtain load research information. The producer shall supply, at its own expense, a suitable location for all meters and associated equipment. Such location must conform to [utility's] [Tri-State's] [Tri-State's and/or distribution cooperative's] meter location policy. The following metering options will be offered by [utility] [Tri-State].

(1) Load Displacement Option: [Utility] [Tri-State] will interconnect with the customer using a single meter which will be ratcheted and would only measure the flow of energy to the producer. Billing to the producer will be at [utility's] [distribution cooperative's] approved tariff rate applicable to the service provided to the QF. There will be no additional customer charge

and no payment by [utility] [Tri-State] for any excess power which might be generated by the QF.

(2) Net Metering Option.

(a) [Utility] [Tri-State] shall install the metering necessary to determine the net energy delivered from producer to [utility] [Tri-State] or the net energy delivered from [utility] [Tri-State] to producer for each time-of-use or single rate period, as applicable, during a billing period. The net energy delivered to either the QF or to the utility is the difference between the energy produced by the QF generation and the energy that would have otherwise been supplied by the utility to the QF absent the QF generation.

(b) The net energy delivered from producer to [utility] [Tri-State] shall be purchased by [utility] [Tri-State] at [utility] [Tri-State's] applicable time-of-use or single period energy rate, as described in Subsection B of 17.9.570.11 NMAC, and filed with the NMPRC. Producer shall be billed for all net energy delivered from [utility] [Tri-State] in accordance with the tariff that is applicable to the producer absent the QF generation. An additional customer charge to cover the added costs of billing and administration may be included in the tariff. At the end of the billing period [utility] [Tri-State] shall net all charges owed to [utility] [Tri-State] by producer and all payments owed by [utility] [Tri-State] to producer. If a net amount is owed to producer for the billing period, and is less than \$50, the payment amount may be carried over to the following billing period. If a net amount is owed to producer and is \$50 or more, [utility] [Tri-State] shall make payment to producer prior to the end of the next billing period.

(c) If provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, the Producer shall pay all incremental costs associated with installing the more costly metering equipment and facilities.

(3) Simultaneous Buy/Sell Option.

(a) [Utility] [Tri-State] will install the metering necessary to determine separately 1) all of the energy produced by producer's generator and 2) all of the power consumed by the producer's loads. [utility] [Tri-State] [the distribution cooperative] will purchase all energy produced at [utility] [Tri-State's] applicable time-of-use or single period energy rate, as described in Subsection B of 17.9.570.11 NMAC, for such purchases, and as filed with and approved by the NMPRC. The producer shall purchase all power consumed at its normally applicable tariff rate. An addition-

al customer charge to cover the added costs of billing and administration may be included.

(b) If provision of the simultaneous buy/sell option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for simultaneous buy/sell metering, the producer shall pay all incremental costs associated with installing the more costly metering equipment and facilities.

(4) All meter standards and testing shall be in compliance with [utility's] [Tri-State's and/or distribution cooperative's] rules and regulations as approved by the NMPRC. The metering configuration shall be one of [utility's] [Tri-State's and/or distribution cooperative's] standard metering configurations as set out in exhibit E and mutually agreeable to the parties or any other metering configuration mutually agreeable to the parties. The agreed upon configuration is shown on exhibit A. [Service by the distribution cooperative to the producer shall be in accordance with the distribution cooperative's articles, bylaws and regulations and in accordance with its tariffs filed with the NMPRC, the terms and conditions of which shall be unaffected by this agreement].

G. Operation. The producer shall notify [Utility] [Tri-State] before the initial energizing and start-up testing of the facility, and [Utility] [Tri-State and/or distribution cooperative] shall have the right to have a representative present at such test. In the event the QF and the producer are in compliance with all provisions of this agreement, [Utility] [Tri-State] shall give written authorization to the producer to operate the QF. Written authorization to operate the QF or approval of any modification thereto shall be construed neither as a confirmation or endorsement of the design of the QF nor as an endorsement, warranty, guarantee or representation concerning the safety, operating characteristics, durability or reliability of the QF. Notwithstanding such authorization, or the failure to give the same, [utility] [Tri-State and/or the distribution cooperative] shall not be responsible or liable for the strength, details of design, defects, outages, adequacy, operation or capacity of the QF to producer or any third party[ies]. Each party shall construct, operate and maintain its system and facilities in compliance with the interconnection and safety standards as set out in exhibit D.

(1) Suspension. The load break disconnect switch provided by the producer may be opened and secured with a [utility] [Tri-State and/or distribution cooperative] owned padlock by [the utility] [Tri-State and/or distribution cooperative] without prior notice to the producer in the event of:

(a) [Utility] [Tri-State and/or dis-

tribution cooperative] system emergency.

(b) Evidence showing the producer's QF to be hazardous to [the utilities] [Tri-State and/or the distribution cooperative's] system or customers.

(2) [Utility] [Tri-State and/or distribution cooperative] will endeavor to notify the producer of its intent to open the switch if:

(a) there is evidence that the producer's QF is interfering with service to other [utility's] [Tri-State' and/or distribution cooperative's] customers or interfering with the operation of [utility's] [Tri-State's and/or distribution cooperative's] equipment. The producer may be reconnected by [utility] [Tri-State and/or distribution cooperative] when the producer makes the necessary changes to comply with the standards required by this agreement.

(b) There is a failure of the producer to adhere to this agreement.

(c) It is necessary to assure safety of [utility's] [Tri-State's and/or distribution cooperative's] personnel.

(d) If suspension of service is otherwise necessary and allowed under [utility's] [Tri-State'] rules and regulations as approved by the NMPRC. The producer shall notify [utility] [Tri-State] prior to making any modifications to the QF or to the interconnection between the QF and [utility] [Tri-State]. The producer must receive approval from [utility] [Tri-State] prior to proceeding with such modifications. As a result of such modifications, the producer shall permit [utility] [Tri-State and/or Distribution Cooperative], at any time, to install or modify any equipment, facility or apparatus necessary to protect the safety of its employees or to assure the accuracy of its metering equipment. The cost of the above shall be borne by the producer. Approval of a modification of a QF shall be construed neither as a confirmation or endorsement of the modification nor as an endorsement, warranty, guarantee or representation concerning the safety, operating characteristics, durability or reliability of the QF. Notwithstanding such approval, or the failure to give the same, [utility] [Tri-State and/or the distribution cooperative] shall not be responsible or liable for the strength, details of design, defects, outages, adequacy, operation or capacity of the QF to producer or any third party[ies]. [Utility] [Tri-State and/or distribution cooperative] shall have the right to disconnect the QF if it has been modified without [utility] [Tri-State] authorization. The producer shall cooperate with load management plans and techniques as ordered or approved by the NMPRC, and the service to be furnished by [the utility] [Tri-State and/or the distribution cooperative] hereunder may be modified as required to conform thereto.

H. Force Majeure. Force

majeure shall mean any cause beyond the control of the Party affected, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, [labor dispute,] labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction. by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence, it shall be unable to overcome. If either party, because of force majeure, is rendered wholly or partly unable to perform its obligations under this agreement, except for the obligation to make payments of money, that Party shall be excused from whatever performance is affected by the force majeure to the extent so affected, provided that:

(1) the nonperforming party, within a reasonable time after the occurrence of the force majeure, gives the other party written notice describing the particulars of the occurrence;

(2) the suspension of performance is of no greater scope and of no longer duration than is required by the force majeure; and

(3) the nonperforming party uses its best efforts to remedy its inability to perform. [This subparagraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the party involved in the disputes.]

I. Indemnity.

(1) Each party shall indemnify and save the other party harmless from liability, loss, costs, and expenses on account of death or injury to persons or damage or destruction of property occasioned by the negligence of the indemnifying party or its agents, officers, employees, contractors, licensees or invitees, or any combination thereof, except to the extent that such death, injury, damage, or destruction resulted from the negligence of the other party. [The indemnity in favor of Tri-State shall extend to and indemnify the distribution cooperative, its officers, directors, agents, employees and contractors.] Provided, however, that:

(a) each party shall be solely responsible for the claims or any payments to any employee or agent for injuries occurring in connection with their employment or arising out of any Workmen's Compensation Law or Occupational Disease Disablement Law;

(b) [The Utility] [Tri-State and the distribution cooperative] [Tri-State] shall not be liable for any loss of earnings, revenues, indirect or consequential damages or injury which may occur to the producer as a result of interruption or partial interruption (single-phasing) in delivery of service hereunder to producer or by failure to receive service from Producer by reason of any cause whatsoever, including negligence; and

(c) the provisions of this subsection on indemnification shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of any valid insurance policy.

(2) The indemnifying party shall pay all costs and expenses incurred by the other party in enforcing the indemnity under this agreement including reasonable attorney fees.

J. Dedication. An undertaking by one party to another party under any provision of this agreement shall not constitute the dedication of such party's system or any portion thereof to the public or to the other party and any such undertaking shall cease upon termination of the party's obligations herein.

K. Status of Producer. In performing under this agreement, the producer shall operate as or have the status of an independent contractor and shall not act as or be an agent, servant, or employee of [the Utility] [Tri-State] [Tri-State or the distribution cooperative].

L. Waiver. Any waiver at any time by either party of its rights with respect to a default under this agreement, or with respect to any other matters arising in connection with this agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.

M. Assignment. This agreement and all provisions hereof shall inure to and be binding upon the respective parties hereto, their personal representatives, heirs, successors, and assigns. Producer shall not assign this agreement or any part hereof without the prior written consent of [the utility] [Tri-State], otherwise this agreement may be terminated pursuant to Paragraph (3) of Subsection D of 17.9.570.15 NMAC of this agreement.

N. Notices. Any payments, notices, demands or requests required or authorized by this agreement shall be deemed properly given if personally delivered or mailed postage prepaid to:

To _____ or upon producer:
 _____, New Mexico _____ (zip code)
 To _____ or upon [the utility] _____, [Tri-State]
 [Tri-State and the distribution coopera-

tive]; _____ The designation of the persons to be notified, or the address thereof, may be changed by notice in writing by one party to the other. Routine notices and notices during system emergency or operational circumstances may be made in person or by telephone.

O. Energy Purchase Price and Metering Option. All electric energy delivered and service rendered hereunder shall be delivered and rendered in accordance with the applicable rate schedules and tariffs attached hereto and made a part hereof by reference. Producer has selected _____ metering option which is more fully explained in Subsection F of 17.9.570.15 NMAC. It is understood and agreed, however that said rates are expressly subject to change by any regulatory body having jurisdiction over the subject matter of this agreement. If a new rate schedule or tariff is approved by the proper regulatory body, the new rate schedule or tariff shall be applicable to this agreement upon the effective date of such rate schedule or tariff.

P. Insurance. In the event the NMPRC or other regulatory body allows [its jurisdictional utilities] [Tri-State] to require the producer to carry liability insurance covering the QF, the producer agrees to obtain such insurance. If insurance is required, the same requirement will be invoked for all producers in a non-discriminatory manner. ALL PRODUCERS ARE STRONGLY URGED TO OBTAIN LIABILITY INSURANCE TO COVER RISKS, LIABILITIES AND CONSEQUENCES WHICH MAY ARISE AS A RESULT OF INTERCONNECTING A QF TO A UTILITY SYSTEM.

Q. Miscellaneous. This agreement and any amendments thereto, including any tariffs made a part hereof, shall at all times be subject to such changes or modifications as shall be ordered from time to time by any regulatory body or court having jurisdiction to require such changes or modification. This agreement (and any tariffs incorporated herein) contains all the agreements and representations of the parties relating to the interconnection and purchases contemplated and no other agreement, warranties, understandings or representations relating thereto shall be binding unless set forth in writing as an amendment hereto.

In witness thereof, the parties have executed this agreement on the date set forth herein above.

Date: _____ By: _____
 Date: _____ PRODUCER
 _____ By: _____
 [17.9.570.15 NMAC - Rp, NMPSC Rule 570.Appendix A, 3-30-07]

HISTORY OF 17.9.570 NMAC:

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

PSC-GO 37 (General Order 37), Rules And Regulations Governing Cogeneration And Small Power Production filed 4/1/81.

First Revised General Order No. 37, Rules And Regulations Governing Cogeneration And Small Power Production filed 12/30/82.

G.O. 37; General Order 37, Second Revised, Rules And Regulations Governing Cogeneration And Small Power Production filed 12/3/86.

G.O. 37; General Order 37, Second Revised, Rules And Regulations Governing Cogeneration And Small Power Production filed 1/5/87.

G.O. 37; Second Revised General Order 37, Governing Cogeneration And Small Power Production filed 3/3/87.

G.O. 37; Third Revised General Order 37, Governing Cogeneration And Small Power Production filed 3/11/88.

NMSPC Rule 570, Governing Cogeneration And Small Power Production filed 6/30/88.

History of Repealed Material:

NMSPC Rule 570, Governing Cogeneration and Small Power Production (filed 06-30-1988) repealed 3-30-07.

Other History:

NMSPC Rule 570, Governing Cogeneration and Small Power Production (filed 06-30-1988) was renumbered, reformatted and replaced by 17.9.570 NMAC, Governing Cogeneration and Small Power Production, effective 3-30-07.

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.4.9 NMAC deleting the starter allowance race. Effective 03/30/2007.

15.2.4.9 OTHER TYPES OF RACES:

[~~**A.** Starter Allowances may be run at any track. Horse(s) that are claimed will not be eligible for Starter Allowances until the new owner(s) of said horse has re-established his eligibility by starting the horse in a Claiming Race for the price corresponding to the Starter Allowance he wishes to run in.~~

[~~**B.**~~ **A.** Classified handicap is a free handicap race which contestants are assigned weights to be carried by the handicapper for the purpose of equalling their respective chances of winning. Assigned

weights must be posted by 4:00 p.m. on the day prior to entry. In addition, all contestants must qualify for the race by starting for a specified claiming price or less within a specified time period (as stated in the conditions of the race). (For eligibility this race will be considered as a starter race for said claiming price.)

[C] B. Optional claiming race is a contest restricted to horses entered to be claimed for a stated claiming price and to those, which have started previously for that claiming price or less. In the case of horses entered to be claimed in such a race, the race shall be considered, for the purpose of these rules, a claiming race. In the case of horses not entered to be claimed the race shall be considered an allowance race.

NEW MEXICO RACING COMMISSION

This is an amendment to Subsection A, of 15.2.5.11 NMAC, amending the requirements for workouts from the starting gate for starters and non-starters. Effective 3/30/2007.

15.2.5.11 WORKOUTS:

A. REQUIREMENTS:

(1) A non-starter must have had within sixty (60) days of entry at least two (2) workouts recorded at a pari mutuel or commission recognized facility and posted with the racing secretary prior to entry, one (1) of the two (2) workouts shall be from the starting gate, and be gate approved. It shall be the trainer's responsibility to establish validity as to workouts and gate approvals.

(2) Any horse which has started, but not within six (6) months, must have one (1) official workout from the starting gate or must have proof of standing the horse at least one (1) time within a sixty (60) day period. Any horse which has started, but not within sixty (60) days, must have at least one (1) workout within sixty (60) days prior to entry. Horses that have not started within six (6) months of entry must have at least two (2) approved workouts within the sixty (60) days.

B. IDENTIFICATION:

(1) Unless otherwise prescribed by the stewards or the commission, the official lip tattoo must have been affixed to a horse's upper lip prior to its participation in an official timed workout.

(2) The trainer or exercise rider shall bring each horse scheduled for an official workout to be identified by the clocker or clocker's assistant immediately prior to the workout.

(3) A horse may be properly identified by its lip tattoo immediately prior to participating in an official timed workout.

(4) The owner, trainer or rider shall be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

C. INFORMATION DISSEMINATION: Information regarding a horse's approved timed workout(s) shall be furnished to the public prior to the start of the race for which the horse has been entered.

D. RESTRICTIONS: A horse shall not be taken onto the track for training or a workout except during hours designated by the association.

NEW MEXICO RACING COMMISSION

This is an amendment to Subsection C of 15.2.6.10 amending the requirements of storage and shipment of split samples.

15.2.6.10 TESTING:

A. REPORTING TO THE TEST BARN:

(1) The official winning horse and any other horse ordered by the commission and/or the stewards shall be taken to the test barn to have a blood and/or urine sample taken at the direction of the official veterinarian.

(2) Random or extra testing may be required by the stewards or the commission at any time on any horse on association grounds.

(3) Unless otherwise directed by the stewards or the official veterinarian, a horse that is selected for testing must be taken directly to the test barn.

(4) A track security guard shall monitor access to the test barn area during and immediately following each racing performance. All persons who wish to enter the test barn area must be a minimum of 18-years-old, be currently licensed by the commission, display their commission identification badge and have a legitimate reason for being in the test barn area.

B. SAMPLE COLLECTION:

(1) Sample collection shall be done in accordance with the RCI drug testing and quality assurance program external chain of custody guidelines, or other guidelines and instructions provided by the official veterinarian.

(2) The official veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be accredited by the association of racing commissioners international and approved by the commission.

(3) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be

sent to the primary testing laboratory.

(4) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(5) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the primary testing laboratory shall be secured as the split sample.

C. STORAGE AND SHIPMENT OF SPLIT SAMPLES:

(1) Split samples obtained in accordance with Paragraphs (3) and (4) Subsection B, of 15.2.6.10 NMAC above shall be secured and made available for further testing. A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the primary laboratory. Split samples shall then be transferred to a freezer at a secure location as provided by state statute or approved by the commission.

(2) A trainer, owner or designee of a horse having been notified that a written report from a primary laboratory states that a prohibited substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another laboratory approved by the commission. The request must be made ~~in writing and delivered to~~ and confirmed with the commission not later than [72] 48 hours excluding weekends and holidays after the trainer of the horse receives written notice of the findings of the primary laboratory. The trainer's first choice, second choice and third choice of laboratories, for the split sample to be sent to, shall be listed within that 48 hours and kept on file with the horsemen's association. Any request not received within the specified deadline shall be considered a positive test. Any split sample so requested must be shipped [as soon as practical] within seven (7) working days after the trainer's 48 hour deadline or the New Mexico horsemen's association may be subject to disciplinary action.

(3) The owner, trainer or designee requesting testing of a split sample shall be responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place designated by the official veterinarian shall constitute a waiver of all rights to split sample testing. Prior to shipment, the commission shall confirm the split sample laboratory's willingness to provide the testing requested, the laboratory's willingness to

send results to both the person requesting the testing and the commission, and arrangements for payment satisfactory to the split sample laboratory. A split sample testing laboratory must be accredited by the association of racing commissioners international and approved by the commission. If an association of racing commissioners international reference laboratory will accept split samples, that laboratory must be included among the laboratories approved for split sample testing.

(4) Prior to opening the split sample freezer, the commission shall provide a split sample chain of custody verification form that shall provide a place for recording the following information and such other information as the commission may require. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample.

(5) Split sample chain of custody form requirements: the date and time the sample is removed from the split sample freezer; the sample number; the address where the split sample is to be sent; the name of the carrier and the address where the sample is to be taken for shipment; verification of retrieval of the split sample from the freezer; verification of each specific step of the split sample packaging in accordance with the recommended procedure verification of the address of the split sample laboratory on the split sample package; verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; the date and time custody of the sample is transferred to the carrier.

(6) A split sample shall be removed from the split sample freezer by a commission representative in the presence of a representative of the horsemen's association.

(7) The owner, trainer or designee shall pack the split sample for shipment in the presence of the representative of the commission, in accordance with the packaging procedures recommended by the commission. A form shall be signed by both the horsemen's representative and the commission representative to confirm the packaging of the split sample. The exterior of the package shall be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package.

(8) The package containing the split sample shall be transported to the location where custody is transferred to the delivery carrier charged with delivery of the package to the commission-approved laboratory selected by the owner or trainer.

(9) The owner, trainer or designee and the commission representative shall inspect the package containing the split

sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(10) The split sample chain of custody verification form shall be completed and signed by the representatives of the commission and the owner or trainer. A commission representative shall keep the original and provide a copy for the owner or trainer.

D. OFFICIAL STATE RACING CHEMIST: The state racing commission may hire or contract with a qualified chemist to act as the official state racing chemist. The duties of the official state racing chemist shall include, but shall not be limited to the following:

(1) Review and evaluate all scientific data submitted by the official testing laboratory concerning any race horse's positive drug test;

(2) Submit a written report to the agency director of the racing commission concerning each positive test, certifying the positive test as such, or that the test does not constitute a positive test based on the scientific data submitted by the official testing laboratory. If the test does not constitute a positive test it may be referred back to the laboratory for further testing;

(3) In the event that a split sample is sent for independent testing and the result of that test does not confirm with the results of the primary testing laboratory, the official state racing chemist shall review all scientific data submitted by the laboratory which tested the split and make recommendations to the agency director;

(4) Appear before the racing commission as an expert witness, as needed in matters concerning chemical testing for drugs and medications;

(5) Consult with the racing commission in matters concerning chemical testing for drugs and medication as the need arises;

(6) At least once each year inspect the official testing laboratory and the race-track collection facilities to insure their compliance with, and use of, proper scientific techniques and procedures.

NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to Subsection O of 15.2.7.12 NMAC amending the payout of the Tri-Superfecta Pools. Effective 03/30/2007.

15.2.7.12 CALCULATION OF PAYOUTS AND DISTRIBUTION OF POOLS:

O. TRI-SUPERFECTA POOLS:

(1) The tri-superfecta requires

selection of the first three finishers, in their exact order, in the first of two designated contests and the first four finishers, in exact order, in the second of the two designated contests. Each winning ticket for the first tri-superfecta contest must be cashed for an exchange ticket on the second tri-superfecta contest in order to remain eligible for the second-half tri-superfecta pool. The number of exchanges to be determined by the association with written approval of the commission. Such tickets may be exchanged only at attended ticket windows prior to the second tri-superfecta contest. Winning first-half tri-superfecta tickets will receive both an exchange and a monetary payout. Both of the designated tri-superfecta contests shall be included in only one tri-superfecta pool.

(2) After wagering closes for the first half of the tri-superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools; the first-half tri-superfecta pool and the second-half tri-superfecta pool.

(3) In the first tri-superfecta contest only, winning tickets shall be determined using the following precedence, based upon the official order of finish for the first tri-superfecta contest:

(a) as a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then

~~(b) the following sequence, based on the official order of finish shall be used to determine the winning combination: first, second, and fourth; first, third, and fourth; second, third, and fourth; first, second, and fifth; first, third, and fifth; and sequentially thereafter;~~

~~(c) where only two horses finish in the race on which tri-superfecta wagering is conducted, the pool shall be calculated so that the net pool should be divided by the value of tickets sold in the pool on horses selected to finish first and second in the exact order of the official result coupled with any other horse that started in the race;~~

~~(d) where only one horse finishes in a race on which tri-superfecta wagering is conducted, the pool shall be calculated so that the net pool shall be divided by the value of the tickets sold in the tri-superfecta pool selecting that horse to finish first, coupled with any two other horses started in the race.]~~

(b) as a single price pool to those whose combinations included, in correct sequence, the first two betting interest; but if there are no such wagers, then

(c) as a single price pool to those whose combinations correctly selected the first-place betting interest only; but if there are no such wagers, then

(d) the entire pool shall be refund-

ed.

(4) If no first-half tri-superfecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half tri-superfecta pool. In such case, the second-half tri-superfecta pool shall be retained and added to any existing tri-superfecta carryover pool.

(5) Winning tickets from the first half of the tri-superfecta shall be exchanged for tickets selecting the first four finishers of the second half of the tri-superfecta. The second-half tri-superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second tri-superfecta contest:

(a) as a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first four betting interests; but if there are no such tickets, then

(b) the entire second-half tri-superfecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half tri-superfecta pool of the next performance.

(6) If a winning first-half tri-superfecta ticket is not presented for cashing and exchange prior to the second-half tri-superfecta contest, the ticket holder may still collect the monetary value associated with the first-half tri-superfecta pool but forfeits all rights to any distribution of the second-half tri-superfecta pool.

(7) Coupled entries and mutuel fields may be permitted in tri-superfecta contests with the prior written approval of the commission.

(8) Should a betting interest in the first half of the tri-superfecta be scratched, those tri-superfecta tickets including the scratched betting interest shall be refunded.

(9) Should a betting interest in the second half of the tri-superfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second tri-superfecta contest, the ticket holder forfeits all rights to the second-half tri-superfecta pool.

(10) If, due to a late scratch, the number of betting interests in the second-half of the tri-superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half tri-superfecta pool for that contest as a single price pool, but not the tri-superfecta carryover.

(11) If there is a dead heat or multiple dead heats in either the first or second-half of the tri-superfecta, all tri-superfecta tickets selecting the correct order of finish, counting a betting interest involved in a

dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:

(a) the first half of the tri-superfecta, the payout shall be calculated as a profit split;

(b) the second half of the tri-superfecta, the payout shall be calculated as a single price pool.

(12) If either of the tri-superfecta contests are cancelled prior to the first tri-superfecta contest, or the first tri-superfecta contest is declared "no contest", the entire tri-superfecta pool shall be refunded on tri-superfecta wagers for that contest and the second-half shall be cancelled.

(13) If the second-half tri-superfecta contest is cancelled or declared "no contest", all exchange tickets and outstanding first-half winning tri-superfecta tickets shall be entitled to the net tri-superfecta pool for that contest as a single price pool, but not the tri-superfecta carryover. If there are no such tickets, the net tri-superfecta pool shall be distributed as described in Subsection O Paragraph (3) of 15.2.7 NMAC.

(14) The tri-superfecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the tri-superfecta carryover equals or exceeds the designated cap, the tri-superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half tri-superfecta carryover is frozen, 100 percent of the net tri-superfecta pool for each individual contest shall be distributed to winners of the first half of the tri-superfecta pool.

(15) A written request for permission to distribute the tri-superfecta carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(16) Should the tri-superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second half of the tri-superfecta after completion of the first half of the tri-superfecta:

(a) as a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then

(b) as a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then

(c) as a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

(d) as a single price pool to those whose combination included, in correct sequence, the first-place betting interest only; but if there are no such wagers, then

(e) as a single price pool to holders of valid exchange tickets.

(f) as a single price pool to holders of outstanding first half-winning tickets.

(17) Contrary to Subsection O Paragraph (4) of 15.2.7 NMAC, during a performance designated to distribute the tri-superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the tri-superfecta. If there are no wagers correctly selecting the first, second, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first and second-place betting interests. If there are no wagers correctly selecting the first and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first half of the tri-superfecta, all first-half tickets will become winners and will receive 100 percent of that day's net tri-superfecta pool and any existing tri-superfecta carryover as a single price pool.

(18) The tri-superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) upon written approval from the commission as provided in Subsection O Paragraph (15) of 15.2.7 NMAC;

(b) upon written approval from the commission when there is a change in the carryover cap or when the tri-superfecta is discontinued;

(c) on the closing performance of the meet or split meet.

(19) If, for any reason, the tri-superfecta carryover must be held over to the corresponding tri-superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The tri-superfecta carryover plus accrued interest shall then be added to the second-half tri-superfecta pool of the following meet on a date and performance so designated by the commission.

(20) Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.

(21) The association must obtain written approval from the commission con-

cerning the scheduling of tri-superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved tri-superfecta format require prior approval from the commission.

NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment an amendment to Subsection O of 16.47.1.8 NMAC no longer requiring casino and concession employees who work in non-restricted areas to be licensed by the New Mexico Racing Commission; to Subsection A of 16.47.1.10 NMAC amending the time requirements between failed examinations for the trainer's test; and to Subsections A and M of 16.47.1.8 NMAC and Subsection A of 16.47.1.11 amending the requirements for the licensing of the authorized agent, license category, license fee and appointments. Effective 03/30/2007.

16.47.1.8 GENERAL PROVISIONS:

A. LICENSES REQUIRED: A person as defined by Subsection P, Paragraph (7) of 15.2.1.7 NMAC shall not participate in pari mutuel racing under the jurisdiction of the commission, or be employed by an association who is a gaming operator, without a valid license issued by the commission.

(1) License categories shall include the following and others as may be established by the commission: **GROUP A** - racing participants eligible for an optional annual or triennial year license to include owners, trainers, veterinarians, jockeys, and stable name registrations. **GROUP B** - associations, racing professionals, concession operators, contractors, and managerial racing officials. **GROUP C** - supervisory racing officials. **GROUP D** - persons employed by the association, or employed by a person or concern contracting with the association, to provide a service or commodity, which requires their presence in a restricted area, or anywhere on association grounds while pari mutuel wagering is being conducted. **GROUP E** - racetrack employees and authorized agents.

(2) Persons required to be licensed shall submit a completed application on forms furnished by the commission and accompanied by the required fee. The following fees are assessed for the issuance of the specified licenses. In addition to license fees listed herein, \$20.00 is assessed for each identification picture and badge.

Announcer	\$55.00
Assistant General Manager	\$80.00
Assistant Racing Secretary	\$15.00
Association	\$80.00
Auditor, Official	\$55.00
<u>Authorized Agent</u>	<u>\$ 5.00</u>
Clerk of Scales	\$15.00
Clocker	\$15.00
Club, Racetrack	\$80.00
Concession Employee	\$ 5.00
Concession Operator	\$80.00
Custodian of Jockey Room	\$15.00
Director or Corporate Officer	\$80.00
Director of Operations	\$55.00
Director of Racing	\$55.00
Exercise Person	\$15.00
General Manager	\$80.00
Groom	\$ 5.00
Horseman's Bookkeeper	\$15.00
Identifier (Horse)	\$15.00
Janitor	\$ 5.00
Jockey (3 year)	\$100.00
Jockey (1 year)	\$80.00
Jockey (Apprentice) (3 year)	\$100.00
Jockey (Apprentice) (1 year)	\$80.00
Jockey Agent	\$55.00
Jockey Valet	\$ 5.00
Laborer	\$ 5.00
Official Personnel (specify position)	\$ 5.00
Official Veterinarian (3 year)	\$100.00
Official Veterinarian (1 year)	\$80.00
Outrider	\$15.00
Owner (3 year)	\$100.00
Owner (1 year)	\$80.00
Paddock Judge	\$15.00
Pari Mutuel Employee	\$ 5.00
Pari Mutuel Manager	\$55.00
Placing Judge	\$15.00
Photo Employee	\$ 5.00
Plater	\$80.00
Pony Person	\$ 5.00
Private Barns	\$ 80.00
Racing Secretary-Handicapper	\$55.00
Security Chief	\$55.00
Security Staff	\$ 5.00
Simulcast Company Employee	\$ 5.00
Simulcast Coordinator	\$55.00
Simulcast Operator	\$80.00
Special Event, 1 or 2 day	\$100.00
Stable Name (3 year)	\$100.00
Stable Name (1 year)	\$80.00
Stable Superintendent	\$55.00
Starter	\$55.00
Starter Assistant	\$15.00
Ticket Seller (Admissions)	\$ 5.00
Timer	\$15.00
Totalisator Employee	\$ 5.00
Totalisator Operator	\$80.00
Track Maintenance, Employee	\$ 5.00
Track Physician	\$80.00
Track Superintendent	\$55.00
Trainer (3 year)	\$100.00

Trainer (1 year)	\$80.00
Trainer Assistant	\$15.00
Veterinarian Assistant	\$15.00
Veterinarian, Practicing (3 year)	\$100.00
Veterinarian, Practicing (1 year)	\$80.00
Veterinarian, Racing (3 year)	\$100.00
Veterinarian, Racing (1 year)	\$80.00
Watchman	\$ 5.00

(3) License applicants may be required to furnish to the commission a set(s) of fingerprints and a recent photograph and may be required to be re-fingerprinted or rephotographed periodically as determined by the commission. The requirements for fingerprints may be fulfilled by submission of prints or verification of such, accepted by a member jurisdiction of the racing commissioners' international, and obtained within two years for annual licenses and four years for three-year licenses. License applicants for owner, trainer or jockey will only need to be fingerprinted upon first application, or if there is a break of three years or more in license continuity. If the commission determines it is necessary, reprinting will be undertaken on the basis of alleged criminal activity on the part of the owner, trainer or jockey.

(4) License applicants for groom, watchman, exercise and pony persons must submit to a drug (controlled substances) and alcohol-screening test when making application for license.

M. DURATION OF LICENSE:

(1) All annual licenses, with the exception of the authorized agent, issued by the commission expire one year from the last day of the month issued. All triennial licenses expire three years from the last day of the month issued.

(2) A license is valid only under the condition that the licensee remains eligible to hold such license.

O. TEMPORARY LICENSES:

(1) The commission may establish provisions for temporary licenses, or may permit applicants to participate in racing pending action on an application. No person may engage in horse racing or be employed on the licensee's premises unless he has been licensed by the commission with the exception of casino employees and also food concession employees who work in non-restricted areas.

(2) The commission may grant an association, who is not conducting a live horse race meeting, a grace period of thirty (30) days to obtain the required licenses for its simulcast employees. An association shall provide to the commission each month, an employment roster for all simulcast employees.

16.47.1.10 TRAINERS

A. ELIGIBILITY:

(1) An applicant for a license as trainer or assistant trainer must be at least 18 years of age; be qualified, as determined by the stewards or other commission designee, by reason of experience, background and knowledge of racing; a trainer's license from another jurisdiction, having been issued within a 24 month period by the commission, may be accepted as evidence of experience and qualifications; evidence of qualifications may require passing one or more of the following: a written examination; an interview or oral examination; a demonstration of practical skills in a barn test given by a committee of trainers appointed by the New Mexico Horsemen's Association and approved by the commission.

(2) Applicants not previously licensed as a trainer shall be required to pass a written/oral examination, demonstrate practical skills, and submit at least two written statements as to the character and qualifications of the applicant, and documentation of having completed a six month apprenticeship under the direct supervision of a licensed trainer or assistant trainer.

(a) Applicants failing the first written/oral examination must wait thirty (30) days before retaking the trainer's test.

(b) Applicants failing the second written/oral examination must wait sixty (60) days before retaking the trainer's test.

(c) Applicants failing the third written/oral examination must wait one (1) year before retaking the trainer's test

16.47.1.11 OWNER'S AUTHORIZED AGENTS

A. LICENSES REQUIRED:

(1) A written authorized agent appointment, acknowledged before a notary public must be approved by the board of stewards.

(2) A written appointment must be filed with the ~~[stewards]~~ commission office for each owner represented.

(3) A written instrument signed by the owner shall clearly set forth the delegated powers of the authorized agent. The owner's signature on the written instrument must be acknowledged before a notary public.

(4) If the written instrument is a power of attorney it shall be filed with the ~~[stewards]~~ commission office.

(5) Any changes must be made in writing and filed as provided in Subsection A, Paragraph (3) of 16.47.1.11 NMAC above.

(6) All authorized agent appointments shall expire December 31st each year or when terminated by the owner in writing, acknowledged before a notary public, and

filed with the ~~[stewards]~~ commission office whereupon the agency appointment shall not be valid.

~~(7) [If an authorized agent is not licensed in any capacity by the commission, he/she is required to obtain an occupational license for identification purposes and pay the required fee.] An authorized agent shall be licensed by the commission as such.~~

B. POWERS AND DUTIES:

(1) An authorized agent may perform on behalf of the licensed owner-principle all acts related to racing, as specified in the agency appointment that could be performed by the principle if such principle were present.

(2) In executing any document on behalf of the principle, the authorized agent must clearly identify the authorized agent and the owner-principle.

(3) When an authorized agent enters a claim for the account of a principle, the name of the licensed owner for whom the claim is being made and the name of the authorized agent shall appear on the claim slip or card.

(4) Authorized agents are responsible for disclosure of the true and entire ownership of each horse for which they have authority. Any change in ownership must be reported immediately to, and approved by, the stewards and recorded by the racing secretary.

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

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Issue Number 8	April 17	April 30
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Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
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Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
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Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
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