

**NEW
MEXICO
REGISTER**

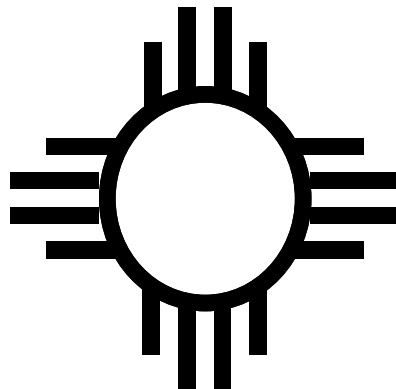


Volume XVIII
Issue Number 10
May 31, 2007

New Mexico Register

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

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New Mexico Register

Volume XVIII, Number 10

May 31, 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A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered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

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT**

FAMILY SERVICES DIVISION

NOTICE OF PUBLIC HEARING

The Children, Youth and Families Department, Family Services, will hold a formal public hearing on July 9, 2007 from 1:30 p.m. to 3:30 p.m. in Apodaca Hall on the 2nd floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico to receive public comments regarding proposed promulgation of regulation 8.8.7 NMAC, governing Court Ordered Domestic Violence Offender Treatment Programs.

The proposed regulation may be obtained by contacting Annjennette Torres at 505-827-6325. Interested persons may testify at the hearing or submit written comments no later than 3:30 p.m. on July 9, 2007. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Annjennette Torres, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-476-0225.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Ms. Torres at 505-827-6325. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

**NEW MEXICO
COUNSELING AND
THERAPY PRACTICE
BOARD**

**Rule Hearing and Regular Board
Meeting**

Rule Hearing

Notice is hereby given that the New Mexico Counseling and Therapy Practice Board will convene a Rule Hearing on July 19, 2007, will begin at 1:00 pm at the New Mexico State Capitol, 211 State Capitol at the Corner of Old Santa Fe Trail and Paseo Peralta, Suite 303, Santa New Mexico.

Regular Board Meeting

Notice is hereby given that the New Mexico Counseling and Therapy Practice Board will convene a Rule Hearing on July 20,

2007, will begin at 9:00 am at the New Mexico State Capitol, Corner of Old Santa Fe Trail and Paseo Peralta, Suite 303, Santa Fe, New Mexico.

Persons desiring to present their views may appear in person at said time and place or send their written comments to the New Mexico Counseling and Therapy Practice Board Office at P.O. 25101, Santa Fe, NM, 87504.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Board Administrator at (505) 476-4610 one week prior to the meeting or as soon as possible. Public documents including the agenda and minutes can be provided in various accessible formats. Please contact the Board Administrator if a summary or other type of accessible format is needed.

*Phone: (505) 476-4610

*Fax: (505) 476-4633

* www.rld.state.nm.us

* counselingboard@state.nm.us

**NEW MEXICO
GAMING CONTROL BOARD**

**NEW MEXICO
GAMING CONTROL BOARD**

**NOTICE OF HEARING ON
AMENDMENTS TO RULE**

The New Mexico Gaming Control Board ("Board") will hold a public hearing at 9:00 a.m. on July 5, 2007, at the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113 to consider amendments for the following rule: **15.1.13 NMAC, License and Certification Renewal Requirements under the Gaming Control Act.**

Copies of the proposed amendments are available on request to the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113, or by calling (505) 841-9733. The proposed changes are also available on our website at www.nmgcb.org. The Board can provide public documents in various accessible formats.

The hearing will be held before a hearing officer appointed by the Board. All interested parties may attend the hearing and present their views orally or submit written comments prior to the hearing. Written comments should be directed to the Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113.

If you are an individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, please contact Denise Leyba, Gaming Control Board, at least one week prior to the hearing at (505) 841-9733.

NEW MEXICO HIGHER EDUCATION DEPARTMENT

NEW MEXICO HIGHER EDUCATION DEPARTMENT

The Higher Education Department ("Department") hereby gives notice that the Department will conduct a public hearing on the New Mexico School of the Deaf campus, the Kiva Room, 1068 Cerrillos Road, Santa Fe, New Mexico 87505 on June 12, 2007, from 10:00 a.m. to 11:00 a.m. The purpose of the public hearing will be to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
5.100.2 NMAC	Post-Secondary Educational Institution Act	Amend

Interested individuals may testify at the public hearing or submit written comments to

Nicole A. Taylor, (nicole.taylor@state.nm.us or fax to 505-476-6511). Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed on the Department's website (www.hed.state.nm.us).

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 Nicole A. Taylor as soon as possible.

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to add a new part to the Food Stamp Program and to amend 8.139.500.10 NMAC. The hearing will be held at 1:00 pm on June 14, 2007, at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Department proposes adding a new part to Chapter 139 of Title 8 at 8.139.502 NMAC. The Department proposes taking this action in order to add a state funded supplement to the existing federal Food Stamp Program. The State Food Stamp Supplement will increase the current food stamp payment to recipients receiving less than \$20.00 per month in federal food stamps.

Additionally, the Department proposes amending section 8.139.500.10 NMAC to clarify the allowable time period for verification of anticipated earned and unearned income in compliance with 7 CFR 273.10(c)(1)(ii).

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Department toll free at 1-800-432-6217 or through the New Mexico Relay System toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

The proposed regulations are available on the **ISD** website at: <http://www.hsd.state.nm.us/isd/ISDregister>

s.html

Individuals wishing to testify or to request a copy of the proposed regulation may do so by contacting the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling toll free 1-800-432-6217.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 PM on the date of the hearing. Please send comments to:

Pamela S. Hyde, J.D., Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to: Ted.Roth@state.nm.us

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Public Hearing

The Commission of Public Records will hold a public hearing at 9:00 a.m. on June 8, 2007 at the State Records Center and Archives building, Commission Room, 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507. The public hearing will be held to solicit comments on the following:

New

1.13.4 NMAC Records Management Requirements for Electronic Messaging

Repeal

1 NMAC 3.2.70.2 Electronic Authentication

Amendments

1.13.2 NMAC Fees

1.13.5 NMAC New Mexico Historical Records Grant Program Guidelines

1.13.6 NMAC New Mexico Historical Records Scholarship Program Guidelines

1.13.10 NMAC Records Custody, Access, Storage and Disposition

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette Solano at 476-7902 by June 4, 2007. Proposed rules can be viewed at <http://www.nmcpr.state.nm.us> and can also

be provided in various accessible formats. For additional assistance please contact Antoinette Solano at 476-7902 or by e-mail at antoinette.solano1@state.nm.us

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, June 19, 2007, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette Solano at 476-7902 by June 11, 2007. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

Amendment

- 1.15.2 NMAC GRRDS, General Administrative Records
- 1.15.3 NMAC GRRDS, General Administrative Records (For Use by Local Government and Educational Institutions)
- 1.18.667 NMAC ERRDS, New Mexico Department Of Environment
- 1.18.790 NMAC ERRDS, Department of Public Safety

New

- 1.18.795 NMAC ERRDS, Homeland Security and Emergency Management Department

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY NOTICE OF PUBLIC HEARING

The New Mexico Department of Public

Safety (NMDPS) will be holding a Public Hearing for the sake of receiving comments on proposed amendments to Title 10, Chapter 10, Part 2 of NMAC, the application procedures governing the Edward Byrne Memorial Justice Assistance Grant Program. The hearing will be held at 1:30 P.M. on Friday, July 6, 2007 at the New Mexico Law Enforcement Academy Auditorium, 4491 Cerrillos Road, Santa Fe, New Mexico 87507. Proposed amendments to the Rule include, but are not limited to, changes, additions, deletions, and clarifications of the application process.

Copies of the proposed amendments shall be made available to the public ten days prior to the Public Hearing and may be obtained by calling 505-827-9112. Comments on these amendments are invited. Oral comments may be made at the hearing, or written comments may be submitted by mail to the Grants Accountability and Compliance Section, New Mexico Department of Public Safety, Post Office Box 1628, Santa Fe, New Mexico 87504-1628, no later than July 11, 2007. Any individual with a disability, who is in need of a reader, amplifier, or other form of auxiliary aid or service in order to attend or participate in the hearing, should contact Lynette Borrego, 505-827-9112 at least ten (10) days prior to the hearing.

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 High Desert Club, SunRay Park, 39 Road 5568, Farmington, New Mexico, commencing in executive session at 8:30 o'clock a.m. on Wednesday, June 20, 2007. The public session will begin at 9:30 o'clock a.m. on Wednesday, June 20, 2007. The Commission will consider adoption of the proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.1.8 NMAC (regarding issuance of a license/ Indian tribe or pueblo comment)

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: May 10, 2007

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

STATE OF NEW MEXICO CONSTRUCTION INDUSTRIES DIVISION

of the Regulation and Licensing Department

NOTICE OF PUBLIC HEARING

Public Hearings will be held to receive comments on proposed amendments to the following rules:

- * NMAC 14.7.2 - 2003 New Mexico Commercial Building Code
- * NMAC 14.7.3 - 2003 New Mexico Residential Building Code
- * NMAC 14.7.6 - 2003 New Mexico Energy Conservation Code
- * NMAC 14.7.7 - 2003 New Mexico Existing Building Code
- * NMAC 14.7.4 - 2003 New Mexico Earthen Building Materials Construction Code
- * NMAC 14.7.5 - 2003 New Mexico Non-Load Bearing Baled Straw Construction Building Standards
- * NMAC 14.8.2 - 2003 New Mexico Plumbing Code
- * NMAC 14.9.2 - 2003 New Mexico Mechanical Code
- * NMAC 14.9.8 - 2003 New Mexico Historic Earthen Buildings Code

In general, these rules will facilitate the adoption of the new 2006 construction, plumbing and mechanical codes, and the 2003 ANSI standards, and may also make technical corrections respecting grammar, formatting and internal consistency.

Public Hearings will take place on **Monday July 2, 2007, from 9:00 a.m. through 12:00 noon**, at the following locations:

- * **Santa Fe, NM** - CID Conference Room, 2550 Cerrillos Road, 3rd Floor, Santa Fe
- * **Albuquerque, NM** -Regulation and Licensing Conference Room, 5200 Oakland Avenue, NE, Albuquerque
- * **Las Cruces, NM** - CID Conference Room, 505 S. Main, Suite 150, Las Cruces
- * **Farmington, NM** - Civic Center, 200 W. Arrington, Farmington
- * **Roswell, NM** - City Council Chambers, 425 North Richardson, Roswell

You are invited to attend and express your opinion on the adoption of the above-referenced proposed rules. If you cannot attend the meeting, you may send your written comments to the General Construction Bureau, Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 476-4700. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., July 2, 2007.

Copies of the draft rules will be available at the Construction Industries Division Offices beginning June 18, 2007.

If you require special accommodations, please notify the Division of such needs no later than June 18, 2007.

End of Notices and Proposed Rules Section

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Adopted Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

20.11.44 NMAC, Emissions Trading For Emissions Subject to a Maintenance Plan, filed 5/31/02 is hereby repealed, effective 6/15/07. The Albuquerque - Bernalillo County Air Quality Control Board adopted this change during their May 9, 2007 regular meeting.

20.11.45 NMAC, Stationary Source Conformity, filed 5/31/02 is hereby repealed, effective 6/15/07. The Albuquerque - Bernalillo County Air Quality Control Board adopted this change during their May 9, 2007 regular meeting.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 2 AIR QUALITY
(STATEWIDE)
PART 85 MERCURY EMIS-
SION STANDARDS AND COMPLI-
ANCE SCHEDULES FOR ELECTRIC
GENERATING UNITS**

20.2.85.1 ISSUING AGENCY. Environmental Improvement Board.
[20.2.85.1 NMAC - N, 06/15/07]

20.2.85.2 SCOPE. All persons who currently operate or intend to construct or modify a coal-fired electric generating unit within the jurisdiction of the environmental improvement board.
[20.2.85.2 NMAC - N, 06/15/07]

20.2.85.3 STATUTORY AUTHORITY. Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section 74-2-5 (C)(2).
[20.2.85.3 NMAC - N, 06/15/07]

20.2.85.4 DURATION . Permanent.
[20.2.85.4 NMAC - N, 06/15/07]

20.2.85.5 EFFECTIVE DATE. June 15, 2007 except where a later date is cited at the end of a section.
[20.2.85.5 NMAC - N, 06/15/07]

20.2.85.6 OBJECTIVE. The objective of this part is to establish mercury emission limitations and compliance schedules for coal-fired electric generating units subject to this part.
[20.2.85.6 NMAC - N, 06/15/07]

20.2.85.7 DEFINITIONS. In addition to the terms defined in 20.2.2.7 NMAC (Definitions), as used in this part, the following definitions apply.

A. "Administrator" means the administrator of the United States environmental protection agency or the administrator's duly authorized representative.

B. "Alternate Hg designated representative" means, for a facility and each electric generating unit at the facility, the natural person who is authorized by the owners and operators of the facility and all such units at the facility in accordance with 20.2.85.102 NMAC through 20.2.85.106 NMAC, to act on behalf of the Hg designated representative in matters of this part.

C. "Automated data acquisition and handling system" or "DAHS" means that component of the continuous emission monitoring system (CEMS), or other emissions monitoring system approved for use under 20.2.85.110 NMAC through 20.2.85.117 NMAC, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required under 20.2.85.110 NMAC through 20.2.85.117 NMAC.

D. "Boiler" means an enclosed fossil- or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

E. "Bottoming-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

F. "Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American society of testing and materials (ASTM) standard specification for classification of coals by rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004).

G. "Coal-derived fuel" means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

H. "Coal-fired" means

combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year.

I. "Cogeneration unit" means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine with the following characteristics:

(1) having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity:

(a) for a topping-cycle cogeneration unit,

(i) useful thermal energy not less than 5 percent of total energy output; and

(ii) useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output; and

(b) for a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

J. "Combustion turbine" means:

(1) an enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) if the enclosed device under Paragraph (1) of this subsection is combined cycle, any associated heat recovery steam generator and steam turbine.

K. "Commence commercial operation", with regard to a unit serving a generator, means the following.

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation.

(a) For a unit that is subject to this part on the date the unit commences commercial operation as defined in Paragraph (1) of this subsection and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same facility), such date shall remain the unit's date of commencement of commercial operation.

(b) For a unit that is subject to this

part on the date the unit commences commercial operation as defined in Paragraph (1) of this subsection and that is subsequently replaced by a unit at the same facility (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in Paragraph (1) or (2) of this subsection as appropriate.

(2) For units that were not subject to this part as of the effective date of this part, a unit's date for commencement of commercial operation shall be the date on which the unit becomes subject to this part.

(a) For a unit with a date for commencement of commercial operation as defined in Paragraph (2) of this subsection and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same facility), such date shall remain the unit's date of commencement of commercial operation.

(b) For a unit with a date for commencement of commercial operation as defined in Paragraph (2) of this subsection and that is subsequently replaced by a unit at the same facility (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in Paragraph (1) or (2) of this subsection as appropriate.

L. "Commence operation" means:

(1) to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber;

(2) for a unit that undergoes a physical change (other than replacement of the unit by a unit at the same facility) after the date the unit commences operation as defined in Paragraph (1) of this subsection, such date shall remain the unit's date of commencement of operation; and

(3) for a unit that is subsequently replaced by a unit at the same facility (e.g., repowered) after the date the unit commences operation as defined in Paragraph (1) of this subsection, the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in Paragraph (1) or (2) of this subsection as appropriate.

M. "Common stack" means a single flue through which emissions from two or more units are exhausted.

N. "Continuous emission monitoring system" or "CEMS" means the equipment required under this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of mercury emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon

dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75. The following systems are the principal types of CEMS required under this part:

(1) a flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(2) a mercury concentration monitoring system, consisting of a mercury pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of mercury emissions in units of micrograms per dry standard cubic meter (ugm/dscm);

(3) a moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent water;

(4) a carbon dioxide monitoring system, consisting of a carbon dioxide concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the carbon dioxide concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of carbon dioxide emissions, in percent carbon dioxide; and

(5) an oxygen monitoring system, consisting of an oxygen concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of oxygen, in percent oxygen.

O. "Department" means the New Mexico environment department.

P. "Electric generating unit" means a stationary coal-fired boiler or a stationary coal-fired combustion turbine that is subject to this part pursuant to 20.2.85.100 NMAC.

Q. "Emissions" means air pollutants exhausted from a unit or facility into the atmosphere, as measured, recorded and reported to the administrator by the Hg designated representative and as determined by the administrator in accordance with 20.2.85.110 NMAC through 20.2.85.117 NMAC.

R. "Escalante generating station" means the existing single coal-fired pressurized unit that generates approximately 250 gross megawatts of electricity and is identified as plant 87 by the United States department of energy, energy information administration.

S. "Facility" means a stationary source that includes one or more electric generating units.

T. "Generator" means a device that produces electricity.

U. "Gross thermal energy" means, with regard to a cogeneration unit, useful thermal energy output plus, where such output is made available for an industrial or commercial process, any heat contained in condensate return or makeup water.

V. "Maximum design heat input" means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in British thermal units per hour) that a unit is capable of combusting on a steady-state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in British thermal units per hour) that a unit is capable of combusting on a steady-state basis, such decreased maximum amount as specified by the person conducting the physical change.

W. "Heat input" means, with regard to a specified period of time, the product (in million British thermal units per time) of the gross calorific value of the fuel (in British thermal units per pound) divided by 1,000,000 British thermal units per million British thermal units and multiplied by the fuel feed rate into a combustion device (in pounds of fuel per time), as measured, recorded, and reported to the administrator by the Hg designated representative and determined by the administrator in accordance with 20.2.85.110 NMAC through 20.2.85.117 NMAC and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

X. "Heat input rate" means the amount of heat input (in million British thermal units) divided by unit operating time (in hours) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in million British thermal units) divided by the unit operating time (in hours) during which the unit combusts the fuel.

Y. "Hg designated representative" means, for a facility and each electric generating unit at the facility, the natural person who is authorized by the owners and operators of the facility and all such units at the facility in accordance with 20.2.85.102 NMAC through 20.2.85.106 NMAC, to represent and legally bind each owner and operator in matters of this part.

Z. "Life-of-the-unit, firm power contractual agreement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) for the life of the unit;

(2) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) for a period of no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

AA. "Mercury emission limitation" or "limitation" means a maximum amount of mercury emissions that is allowed to be exhausted from a facility and electric generating units at such facility pursuant to 20.2.85.101 NMAC.

BB. "Monitoring system" means any monitoring system that meets the requirements of 20.2.85.110 NMAC through 20.2.85.117 NMAC, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR Part 75.

CC. "Nameplate capacity" means, starting from the initial installation of a generator, the maximum electric generating output, in megawatts, that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other derates) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electric generating output, in megawatts, that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other derates), such increased maximum amount as specified by the person conducting the physical change.

DD. "New facility" means a facility that includes one or more electric generating units and commences operation on or after January 1, 2004.

EE. "New electric generating unit" means an electric generating unit commencing operation on or after January 1, 2004.

FF. "Operator" means any person who operates, controls, or supervises an electric generating unit or a facility that includes an electric generating unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such electric generating unit or facility.

GG. "Ounce" means 2.84 times 10 to the seventh power micrograms. For purposes of this part, fractions of an ounce shall be rounded up to the next larger whole ounce.

HH. "Owner" means any of the following persons:

(1) any holder of any portion of

the legal or equitable title in a facility or an electric generating unit;

(2) any holder of a leasehold interest in a facility or an electric generating unit; or

(3) any purchaser of power from a facility or an electric generating unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such facility or electric generating unit.

II. "Potential electric output capacity" means 33 percent of a unit's maximum design heat input, divided by 3,413 British thermal units per kilowatt-hour, divided by 1,000 kilowatt-hour per megawatt-hour, and multiplied by 8,760 hours per year.

JJ. "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22.

KK. "Repowered" means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) atmospheric or pressurized fluidized bed combustion;

(2) integrated gasification combined cycle;

(3) magnetohydrodynamics;

(4) direct and indirect coal-fired turbines;

(5) integrated gasification fuel cells; or

(6) as determined by the administrator, a derivative of one or more of the technologies under Paragraphs (1) through (5) of this subsection and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

LL. "Sequential use of energy" means:

(1) for a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) for a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

MM. "San Juan generating station" means the existing four coal-fired pressurized units that generate approximately 1,800 gross megawatts of electricity

and is identified as plant 2451 by the United States department of energy, energy information administration.

NN. "State" means:

(1) for purposes of referring to a governing entity, the state of New Mexico; or

(2) for purposes of referring to a geographic area, all geographic areas within the jurisdiction of the environmental improvement board.

OO. "Stationary source" means any building, structure, facility, or installation that emits or may emit an air pollutant.

PP. "Submit or serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation in person, by United States postal service, or by other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

QQ. "Topping-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

RR. "Total energy input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

SS. "Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

TT. "Unit" means a stationary coal-fired boiler or a stationary coal-fired combustion turbine.

UU. "Unit operating day" means a calendar day in which a unit combusts any fuel.

VV. "Useful power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

WW. "Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:

(1) made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) used in a heat application

(e.g., space heating or domestic hot water heating); or

(3) used in a space cooling application (i.e., thermal energy used by an absorption chiller).

XX. "Utility power distribution system" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

[20.2.85.7 NMAC - N, 06/15/07]

20.2.85.8 DOCUMENTS.

Documents incorporated and cited in this part may be viewed at the New Mexico Environment Department, Air Quality Bureau, 2048 Galisteo Street, Santa Fe, NM 87505.

[20.2.85.8 NMAC - N, 06/15/07]

20.2.85.9 SEVERABILITY.

If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.85.9 NMAC - N, 06/15/07]

20.2.85.10 CONSTRUCTION.

This part shall be liberally construed to carry out its purpose.

[20.2.85.10 NMAC - N, 06/15/07]

20.2.85.11 SAVINGS CLAUSE.

Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.85.11 NMAC - N, 06/15/07]

20.2.85.12 COMPLIANCE WITH OTHER REGULATIONS.

Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.85.12 NMAC - N, 06/15/07]

20.2.85.13 LIMITATION OF DEFENSE.

The existence of a valid permit under this part shall not constitute a defense to a violation of any section of this part, except the requirement for obtaining a permit.

[20.2.85.13 NMAC - N, 06/15/07]

20.2.85.14 to 20.2.85.99

[RESERVED]

20.2.85.100 APPLICABILITY.

A. The following units, and any facility that includes one or more such units, shall be subject to the requirements of this part.

(1) Except as provided in

Subsections B and C of this section, a stationary, coal-fired boiler or stationary, coal-fired combustion turbine in the state serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatts electric producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (1) of this subsection, is not an electric generating unit begins to combust coal or coal-derived fuel or to serve a generator with nameplate capacity of more than 25 megawatts electric producing electricity for sale, the unit shall become an electric generating unit as provided in Paragraph (1) of this subsection on the first date on which it both combusts coal or coal-derived fuel and serves such generator.

B. A unit that meets the requirements set forth in Paragraph (1) of this subsection shall not be an electric generating unit.

(1) A unit that is an electric generating unit under Paragraph (1) or (2) of Subsection A of this section:

(a) qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(b) not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatts electric supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 megawatt-hours, whichever is greater, to any utility power distribution system for sale.

(2) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of Paragraph (1) of this subsection for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become an electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of Subparagraph (b) of Paragraph (1) of this subsection.

C. A "solid waste incineration unit" as defined in Clean Air Act Section 129(g)(1) combusting "municipal waste" as defined in Clean Air Act Section 129(g)(5) shall not be an electric generating unit if it is subject to one of the following rules:

(1) 20.2.77 NMAC, which incorporates by reference the following:

(a) 40 CFR 60 Subpart Cb,

"Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That Are Constructed On or Before September 20, 1994";

(b) 40 CFR 60 Subpart Eb, "Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996";

(c) 40 CFR 60 Subpart AAAA, "Standards of Performance for Small Municipal Waste Combustors for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001";

(d) 40 CFR 60 Subpart BBBB, "Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999"; or

(2) 40 CFR 62 Subpart FFF, "Federal Plan Requirements for Large Municipal Waste Combustors Constructed On or Before September 20, 1994"; or

(3) 40 CFR 62 Subpart JJJ, "Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999".

[20.2.85.100 NMAC - N, 06/15/07]

20.2.85.101 MERCURY EMISSION LIMITATIONS.

A. The following are the amounts of the state's annual allowable mercury emissions from electric generating units, in ounces of mercury per calendar year:

(1) for calendar years 2010 through 2017, 9,568 ounces per year; and

(2) for calendar year 2018 and each calendar year thereafter, 3,776 ounces per year.

B. Beginning in calendar year 2010, the state's annual allowable mercury emissions from electric generating units shall apply as the following facility-wide mercury emission limitations.

(1) For the calendar years 2010 through 2017:

(a) San Juan generating station shall emit no more than 7,808 ounces of mercury per calendar year; and

(b) Escalante generating station shall emit no more than 1,280 ounces of mercury per calendar year; and

(c) new facilities and any other facilities except San Juan and Escalante generating stations, in aggregate, shall emit no more than 480 ounces of mercury per calendar year.

(2) For the calendar year 2018 and each calendar year thereafter:

(a) San Juan generating station

shall emit no more than 3,323 ounces of mercury per calendar year; and

(b) Escalante generating station shall emit no more than 340 ounces of mercury per calendar year; and

(c) new facilities and any other facilities except San Juan and Escalante generating stations, in aggregate, shall emit no more than 113 ounces of mercury per calendar year.

[20.2.85.101 NMAC - N, 06/15/07]

20.2.85.102 AUTHORITY AND RESPONSIBILITIES OF Hg DESIGNATED REPRESENTATIVES.

A. Except as provided under 20.2.85.103 NMAC, each facility, including all electric generating units at the facility, shall have one and only one Hg designated representative, with regard to all matters under this part concerning the facility or any electric generating unit at the facility.

B. The Hg designated representative of the facility shall be selected by an agreement binding on the owners and operators of the facility and all electric generating units at the facility and shall act in accordance with the certification statement in 20.2.85.105 NMAC.

C. Upon receipt by the administrator of a complete certificate of representation under 20.2.85.105 NMAC, the Hg designated representative of the facility shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the facility represented and each electric generating unit at the facility in all matters pertaining to this part, notwithstanding any agreement between the Hg designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the Hg designated representative by the department, the administrator, or a court regarding the facility or electric generating unit.

D. No permit will be issued pursuant to 20.2.85.108 NMAC and, no emissions data reports will be accepted for an electric generating unit at a facility, until the administrator has received a complete certificate of representation under 20.2.85.105 NMAC for a Hg designated representative of the facility and the electric generating units at the facility.

E. Each submission under this part shall be submitted, signed, and certified by the Hg designated representative for each facility on behalf of which the submission is made. Each such submission shall include the following certification statement by the Hg designated representative: "I am authorized to make this submission on behalf of the owners and operators of the facility or electric generating units for

which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

F. The department and the administrator will accept or act on a submission made on behalf of owner or operators of a facility or an electric generating unit only if the submission has been made, signed, and certified in accordance with Subsection E of this section.

[20.2.85.102 NMAC - N, 06/15/07]

20.2.85.103 ALTERNATE Hg DESIGNATED REPRESENTATIVE.

A. A certificate of representation under 20.2.85.105 NMAC may designate one and only one alternate Hg designated representative, who may act on behalf of the Hg designated representative. The agreement by which the alternate Hg designated representative is selected shall include a procedure for authorizing the alternate Hg designated representative to act in lieu of the Hg designated representative.

B. Upon receipt by the administrator of a complete certificate of representation under 20.2.85.105 NMAC, any representation, action, inaction, or submission by the alternate Hg designated representative shall be deemed to be a representation, action, inaction, or submission by the Hg designated representative.

C. Except in this section and 20.2.85.7 NMAC, Subsections A and D of 20.2.85.102 NMAC, 20.2.85.104 NMAC, and 20.2.85.105 NMAC, whenever the term "Hg designated representative" is used in this part, the term shall be construed to include the Hg designated representative or any alternate Hg designated representative.

[20.2.85.103 NMAC - N, 06/15/07]

20.2.85.104 CHANGING Hg DESIGNATED REPRESENTATIVE AND ALTERNATE Hg DESIGNATED REPRESENTATIVE; CHANGES IN OWNERS AND OPERATORS.

A. The Hg designated representative may be changed at any time upon receipt by the administrator of a superseding complete certificate of representation under 20.2.85.105 NMAC. Notwithstanding any such change, all repre-

sentations, actions, inactions, and submissions by the previous Hg designated representative before the time and date when the administrator receives the superseding certificate of representation shall be binding on the new Hg designated representative and the owners and operators of the facility and the electric generating units at the facility.

B. The alternate Hg designated representative may be changed at any time upon receipt by the administrator of a superseding complete certificate of representation under 20.2.85.105 NMAC. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg designated representative before the time and date when the administrator receives the superseding certificate of representation shall be binding on the new alternate Hg designated representative and the owners and operators of the facility and the electric generating units at the source.

C. In the event a new owner or operator of a facility or an electric generating unit is not included in the list of owners and operators in the certificate of representation under 20.2.85.105 NMAC, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the Hg designated representative and any alternate Hg designated representative of the facility or electric generating unit, and the decisions and orders of the department, the administrator, or a court, as if the new owner or operator were included in such list.

D. Within 30 days following any change in the owners and operators of a facility or an electric generating unit, including the addition of a new owner or operator, the Hg designated representative or any alternate Hg designated representative shall submit a revision to the certificate of representation under 20.2.85.105 NMAC amending the list of owners and operators to include the change.

[20.2.85.104 NMAC - N, 06/15/07]

20.2.85.105 CERTIFICATE OF REPRESENTATION.

A. A complete certificate of representation for a Hg designated representative or an alternate Hg designated representative shall include the following elements in a format prescribed by the administrator.

(1) Identification of the facility, and each electric generating unit at the facility, for which the certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the

Hg designated representative and any alternate Hg designated representative.

(3) A list of the owners and operators of the facility and of each electric generating unit at the facility.

(4) The following certification statements by the Hg designated representative and any alternate Hg designated representative.

(a) "I certify that I was selected as the Hg designated representative or alternate Hg designated representative, as applicable, by an agreement binding on the owners and operators of the facility and each electric generating unit at the facility."

(b) "I certify that I have all the necessary authority to carry out my duties and responsibilities under 20.2.85 NMAC on behalf of the owners and operators of the facility and of each electric generating unit at the facility and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(c) "I certify that the owners and operators of the source and of each electric generating unit at the facility shall be bound by any order issued to me by the administrator, the department, or a court regarding the source or unit."

(d) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, an electric generating unit, or where a customer purchases power from an electric generating unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'Hg designated representative' or 'alternate Hg designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the facility and of each electric generating unit at the facility."

(5) The signature of the Hg designated representative and any alternate Hg designated representative and the dates signed.

B. Unless otherwise required by the department or the administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the department or the administrator. Neither the department nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

[20.2.85.105 NMAC - N, 06/15/07]

20.2.85.106 OBJECTIONS CONCERNING Hg DESIGNATED REPRESENTATIVE.

A. Once a complete certificate of representation under 20.2.85.105 NMAC has been submitted and received, the department and the administrator will rely on the certificate of representation unless and until a superseding complete cer-

tificate of representation under 20.2.85.105 NMAC is received by the administrator.

B. Except as provided in Subsection A or B of 20.2.85.104 NMAC, no objection or other communication submitted to the department or the administrator concerning the authorization, or any representation, action, inaction, or submission, of the Hg designated representative shall affect any representation, action, inaction, or submission of the Hg designated representative or the finality of any decision or order by the department or the administrator under this part.

C. Neither the department nor the administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any Hg designated representative.

[20.2.85.106 NMAC - N, 06/15/07]

20.2.85.107 LIABILITY.

A. Any provision of this part that applies to a facility or the Hg designated representative of a facility shall also apply to the owners and operators of such facility and of the electric generating units at the facility.

B. Any provision of this part that applies to an electric generating unit or the Hg designated representative of an electric generating unit shall also apply to the owners and operators of such electric generating unit.

[20.2.85.107 NMAC - N, 06/15/07]

20.2.85.108 PERMIT REQUIREMENTS.

A. By January 1, 2010, each facility with one or more electric generating units and subject to this part shall obtain facility-wide mercury emission limitations as part of the facility's operating permit issued by the department under 20.2.70 NMAC. Facility-wide mercury emission limitations shall not exceed the facility-wide mercury emission limitations under 20.2.85.101 NMAC.

B. Prior to a new electric generating unit commencing operation at a facility already subject to this part, the Hg designated representative shall obtain for the facility a modified operating permit under 20.2.70 NMAC, including a facility-wide mercury emission limitation sufficient to permit operation of the new electric generating unit. Facility-wide mercury emission limitations shall not exceed the facility-wide mercury emission limitations under 20.2.85.101 NMAC.

C. Prior to commencement of operation of a new facility and any other facility except San Juan and Escalante generating stations, the Hg designated representative shall obtain for the new facility a construction permit under 20.2.72 NMAC

and an operating permit under 20.2.70 NMAC. Each permit shall include a mercury emission limitation for units at the facility. As part of the permit application under 20.2.72 NMAC, the Hg designated representative shall request for the facility a facility-wide mercury emission limitation, in ounces of mercury per calendar year, not to exceed the unrequested and available applicable aggregate new facility mercury emission limitation in accordance with 20.2.85.101 NMAC. In no case shall mercury emission limitations requested for new facilities, in aggregate, exceed the applicable mercury emission limitation for new facilities in 20.2.85.101 NMAC. The department shall subtract a new facility's facility-wide mercury emission limitation as permitted from the available applicable aggregate new facility mercury emission limitation under 20.2.85.101 NMAC. The department shall keep permanent records of the available and permitted new facility mercury emission limitations in each calendar year.

D. Each application pursuant to this section for a construction permit under 20.2.72 NMAC and a new or modified operating permit under 20.2.70 NMAC shall include the following information:

(1) identification of the facility and each electric generating unit at the facility; and

(2) identification of the mercury emission limitations for the calendar years 2010 through 2017 and for the calendar year 2018 and each calendar year thereafter, as applicable and in accordance with 20.2.85.101 NMAC.

[20.2.85.108 NMAC - N, 06/15/07]

20.2.85.109 PROHIBITIONS ON MERCURY ALLOWANCES AND MERCURY ALLOCATIONS.

Mercury emission limitations described in this part shall not qualify as mercury allowances or mercury allocations under any allowance system approved under 40 CFR 60.24(h)(6).

[20.2.85.109 NMAC - N, 06/15/07]

20.2.85.110 COMPLIANCE WITH 40 CFR PART 75.

Facilities subject to this part shall comply with all requirements of 40 CFR Part 75 concerning determinations of mercury mass emissions.

[20.2.85.110 NMAC - N, 06/15/07]

20.2.85.111 GENERAL REQUIREMENTS FOR MONITORING AND REPORTING.

The owner and operator, and to the extent applicable, the Hg designated representative, of an electric generating unit shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this part and 40

CFR 75 Subpart I. For purposes of complying with such requirements, the definitions in 20.2.85.7 NMAC and in 40 CFR 72 shall apply, and the terms "affected unit" and "continuous emission monitoring system" (or "CEMS") contained in 40 CFR 75 Subpart I shall be deemed to refer to the terms "electric generating unit" and "continuous emission monitoring system" (or "CEMS") respectively, as defined in 20.2.85.7 NMAC. The owner or operator of a unit that is not an electric generating unit as defined in this part but that is monitored under 40 CFR 75.82(b)(2)(i) shall comply with the same monitoring, recordkeeping, and reporting requirements as an electric generating unit.

A. Requirements for installation, certification, and data accounting. The owner or operator of each electric generating unit shall:

(1) install all monitoring systems required under this part for monitoring mercury mass emissions and individual unit heat input (including all systems required to monitor mercury concentration, stack gas moisture content, stack gas flow rate, and carbon dioxide or oxygen concentration, as applicable) in accordance with 40 CFR 75.81 and 40 CFR 75.82;

(2) successfully complete all certification tests required under this part and meet all other requirements of this part and 40 CFR 75 Subpart I applicable to the monitoring systems under Paragraph (1) of this subsection;

(3) record and report the data from the monitoring systems under Paragraph (1) of this subsection in accordance with 40 CFR 75; and

(4) quality-assure the data from the monitoring systems under Paragraph (1) of this subsection in accordance with 40 CFR 75.

B. Compliance deadlines. The owner or operator shall meet the monitoring system certification and other requirements of this section on or before the following dates.

(1) For the owner or operator of an electric generating unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of an electric generating unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(a) January 1, 2009; or

(b) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of an electric generating unit for which construction of a new stack or flue or installation of add-on mercury emission controls, a

flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system is completed after the applicable deadline under Paragraph (1) or (2) of this subsection, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on mercury emissions controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system.

C. Reporting data.

(1) Except as provided in Paragraph (2) of this subsection, the owner or operator of an electric generating unit that does not meet the applicable compliance date set forth in Subsection B of this section for any monitoring system under Paragraph (1) of Subsection A of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for mercury concentration, stack gas flow rate, stack gas moisture content, and any other parameters required to determine mercury mass emissions and heat input in accordance with 40 CFR 75.80(g).

(2) The owner or operator of an electric generating unit that does not meet the applicable compliance date set forth in Paragraph (3) of Subsection B of this section for any monitoring system under Paragraph (1) of Subsection A of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in 40 CFR 75 Subpart D, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under Paragraph (3) of Subsection B of this section.

D. Prohibitions.

(1) No owner or operator of an electric generating unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this part without having obtained prior written approval in accordance with 20.2.85.116 NMAC.

(2) No owner or operator of an electric generating unit shall operate the unit so as to discharge, or allow to be discharged, mercury emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this part and 40 CFR 75 Subpart I.

(3) No owner or operator of an electric generating unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved

emission monitoring method, and thereby avoid monitoring and recording mercury mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this part and 40 CFR 75 Subpart I.

(4) No owner or operator of an electric generating unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this part and 40 CFR Part 75, except under any one of the following circumstances:

(a) the owner or operator is monitoring emissions from the electric generating unit with another certified monitoring system approved, in accordance with the applicable provisions of this part and 40 CFR 75 Subpart I, by the department for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(b) the Hg designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with 20.2.85.112 NMAC.

[20.2.85.111 NMAC - N, 06/15/07]

20.2.85.112 INITIAL CERTIFICATION AND RECERTIFICATION PROCEDURES.

A. The owner or operator of an electric generating unit shall be exempt from the initial certification requirements of this section for a monitoring system under Paragraph (1) of Subsection A of 20.2.85.111 NMAC if the following conditions are met.

(1) The monitoring system has been previously certified in accordance with 40 CFR Part 75.

(2) For continuous emission monitoring systems, the applicable quality-assurance and quality-control requirements of 40 CFR 75.21 and 40 CFR 75 Appendix B are fully met for the certified monitoring system described in Paragraph (1) of Subsection A of this section.

(3) For sorbent trap monitoring systems, the applicable quality-assurance and quality-control requirements of 40 CFR 75.15, 40 CFR 75 Appendix A Section 6.5.7, 40 CFR 75 Appendix B Sections 1.5 and 2.3, and 40 CFR 75 Appendix K are fully met for the certified monitoring system.

B. The recertification provisions of this section shall apply to a monitoring system which is exempt from initial certification requirements under Subsection

A of this section.

C. Except as provided in Subsection A of this section, the owner or operator of an electric generating unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (e.g., a continuous emission monitoring system and sorbent trap monitoring system under 40 CFR 75.15). The owner or operator of an electric generating unit that qualifies to use the mercury low mass emissions excepted monitoring methodology under 40 CFR 75.81(b) that also qualifies to use an alternative monitoring system under 40 CFR 75 Subpart E shall comply with the procedures in Subsections D or E of this section respectively.

(1) Requirements for initial certification. The owner or operator shall ensure that each monitoring system under Paragraph (1) of Subsection A of 20.2.85.111 NMAC (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadline in Subsection B of 20.2.85.111 NMAC. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this part and 40 CFR Part 75 in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

(2) Requirements for recertification.

(a) Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under Paragraph (1) of Subsection A of 20.2.85.111 NMAC or sorbent trap monitoring system under 40 CFR 75.15 that may significantly affect the ability of the system to accurately measure or record mercury mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or 40 CFR appendix B, the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b).

(b) Whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system, and each sorbent trap monitoring system under 40 CFR 75.15, whose accuracy is potentially affected by the change, in accordance with 40 CFR 75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in

location or orientation of the sampling probe or site.

(3) Approval process for initial certification and recertification. Subparagraphs (a) through (d) of this paragraph apply to both initial certification and recertification of a continuous monitoring system under Paragraph (1) of Subsection A of 20.2.85.111 NMAC. For recertifications, apply the word "recertification" instead of the words "certification" and "initial certification" and apply the word "recertified" instead of the word "certified," and follow the procedures in 40 CFR 75.20(b)(5) in lieu of the procedures in Paragraph (2) of this section.

(a) Notification of certification. The Hg designated representative of an electric generating unit shall submit to the department, the administrator's region 6 office, and the administrator written notice of the dates of certification testing, in accordance with 20.2.85.114 NMAC.

(b) Certification application. The Hg designated representative of an electric generating unit shall submit to the department a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63.

(c) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitoring system may be used under this part for a period not to exceed 120 days after receipt by the department of the complete certification application for the monitoring system under Subparagraph (b) of this paragraph. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the state.

(d) Certification application approval process. The department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under Subparagraph (b) of this paragraph. In the event the department does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under this part.

(i) Approval notice. If the certification application is complete and

shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the department will issue a written notice of approval of the certification application within 120 days of receipt.

(ii) Incomplete application notice. If the certification application is not complete, then the department will issue a written notice of incompleteness that sets a reasonable date by which the Hg designated representative of an electric generating unit must submit the additional information required to complete the certification application. If the Hg designated representative of an electric generating unit does not comply with the notice of incompleteness by the specified date, then the department may issue a notice of disapproval under this subparagraph. The 120-day review period shall not begin before receipt of a complete certification application.

(iii) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of 40 CFR Part 75 or if the certification application is incomplete and the requirement for disapproval under this subparagraph is met, then the department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under 40 CFR 75.20(a)(3)). The owner or operator shall follow the procedures for loss of certification in Paragraph (4) of this subsection for each monitoring system that is disapproved for initial certification.

(iv) Audit decertification. The department may issue a notice of disapproval of the certification status of a monitor in accordance with Subsection B of 20.2.85.113 NMAC.

(4) Procedures for loss of certification. If the department issues a notice of disapproval of a certification application or a notice of disapproval of certification status under subparagraph d of Paragraph (3) of this subsection, then:

(a) the owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of electric generating unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii), or 40 CFR 75.21(e) and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i):

(i) for a disapproved mercury pollutant concentration monitor and disapproved flow monitor, respectively,

the maximum potential concentration of mercury and the maximum potential flow rate, as defined in 40 CFR 75 Appendix A, Sections 2.1.7.1 and 2.1.4.1;

(ii) for a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential carbon dioxide concentration or the minimum potential oxygen concentration (as applicable), as defined in 40 CFR 75 Appendix A, Sections 2.1.5, 2.1.3.1, and 2.1.3.2;

(iii) for a disapproved sorbent trap monitoring system under 40 CFR 75.15 and disapproved flow monitor, respectively, the maximum potential concentration of mercury and maximum potential flow rate, as defined in 40 CFR 75 Appendix A, Sections 2.1.7.1 and 2.1.4.1;

(b) the Hg designated representative of an electric generating unit shall submit a notification of certification retest dates and a new certification application in accordance with Subparagraphs (a) and (b) of Paragraph (3) of this subsection;

(c) the owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

D. Initial certification and recertification procedures for units using the mercury low mass emission excepted methodology under 40 CFR 75.81(b). The owner or operator of an electric generating unit qualified to use the mercury low mass emissions excepted methodology under 40 CFR 75.81(b) shall meet the applicable certification and recertification requirements in 40 CFR 75.81(c) through (f).

E. Certification/recertification procedures for alternative monitoring systems. The Hg designated representative of each electric generating unit for which the owner or operator intends to use an alternative monitoring system approved by the administrator under 40 CFR 75 Subpart E shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

[20.2.85.112 NMAC - N, 06/15/07]

20.2.85.113 MISSING DATA PROCEDURES AND OUT OF CONTROL PERIODS FOR CONTINUOUS MONITORING SYSTEMS.

A. Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable missing data procedures in 40 CFR 75

Subpart D.

B. Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under 20.2.85.112 NMAC or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the department will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the department or the administrator. By issuing the notice of disapproval, the department revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in 20.2.85.112 NMAC for each disapproved monitoring system. [20.2.85.113 NMAC - N, 06/15/07]

20.2.85.114 NOTIFICATIONS.

The Hg designated representative of an electric generating unit shall submit written notices to the department and the administrator in accordance with 40 CFR 75.61. [20.2.85.114 NMAC - N, 06/15/07]

20.2.85.115 RECORDKEEPING AND REPORTING.

A. The Hg designated representative of an electric generating unit shall comply with all recordkeeping and reporting requirements in this section and the applicable requirements of 40 CFR 75.84.

B. Certification applications. The Hg designated representative of an electric generating unit shall submit an application to the department within 45 days after completing all initial certification or recertification tests required under 20.2.85.112 NMAC, including the information required under 40 CFR 75.63.

C. Quarterly reports. The Hg designated representative of an electric generating unit shall submit to the administrator quarterly reports, as follows.

(1) Report of the mercury mass emissions data and heat input data for the electric generating unit, in an electronic

quarterly report in a format prescribed by the administrator, for each calendar quarter beginning with:

(a) for an electric generating unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; or

(b) for an electric generating unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under Subsection B of 20.2.85.111 NMAC, unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009.

(2) The Hg designated representative shall submit each quarterly report to the administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75.84(f).

(3) For electric generating units that are also subject to an acid rain emissions limitation, quarterly reports shall include the applicable data and information required by 40 CFR 75 Subparts F through H as applicable, in addition to the mercury mass emission data, heat input data, and other information required by this part.

D. Compliance certification. The Hg designated representative of an electric generating unit shall submit to the administrator and the department a compliance certification in support of each quarterly report in a format prescribed by the administrator, based on reasonable inquiry of those persons with primary responsibility for ensuring that all of each electric generating unit's emissions are correctly and fully monitored. The certification shall state that:

(1) the monitoring data submitted were recorded in accordance with the applicable requirements of this part and 40 CFR Part 75, including the quality assurance procedures and specifications; and

(2) for an electric generating unit with add-on mercury emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system and for all hours where mercury data are substituted in accordance with 40 CFR 75.34(a)(1), the mercury add-on emission controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR 75 Appendix B, or quality-assured sulfur dioxide emission data recorded in accordance with 40 CFR Part 75 document that the flue gas desulfurization sys-

tem, or quality-assured nitrogen oxides emission data recorded in accordance with 40 CFR Part 75 document that the selective catalytic reduction system, was operating properly, as applicable, and the substitute data values do not systematically underestimate mercury emissions.

[20.2.85.115 NMAC - N, 06/15/07]

20.2.85.116 PETITIONS. The Hg designated representative of an electric generating unit may submit a petition under 40 CFR 75.66 to the department and the administrator requesting approval to apply an alternative to any requirement of 20.2.85.111 NMAC through 20.2.85.115 NMAC and 20.2.85.117 NMAC. Application of an alternative to any requirement of 20.2.85.111 NMAC through 20.2.85.115 NMAC and 20.2.85.117 NMAC is in accordance with this section and 20.2.85.111 NMAC through 20.2.85.115 NMAC and 20.2.85.117 NMAC only to the extent that the petition is approved in writing by the administrator, in consultation with the department.

[20.2.85.116 NMAC - N, 06/15/07]

20.2.85.117 ADDITIONAL REQUIREMENTS TO PROVIDE HEAT INPUT DATA. The owner or operator of an electric generating unit that monitors and reports mercury mass emissions using a mercury concentration monitoring system and a flow monitoring system shall also monitor and report heat input rate at the electric generating unit level using the procedures set forth in 40 CFR Part 75.

[20.2.85.117 NMAC - N, 06/15/07]

HISTORY OF 20.2.85 NMAC:
[RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

These are amendments to 20.2.71 NMAC, Sections 7 and 112, to be effective June 15, 2007.

20.2.71.7 DEFINITIONS. In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part^[+], the following definitions apply.

A. "Allowable emission rate" means the maximum emission allowed by the more stringent emission limitation applicable to the source contained in:

(1) any New Mexico air quality control regulation;

(2) any federal standard of performance, emission limitation, or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412; or

(3) any condition within a con-

struction or operating permit issued by the department.

B. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any fee pollutant.

C. "Fee pollutant" means:

(1) sulfur dioxide, nitrogen dioxide, carbon monoxide, total suspended particulate matter, ~~and~~ volatile organic compounds, and mercury; and

(2) any hazardous air pollutant that is subject to any standard promulgated pursuant to section 112 of the federal act.

D. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

E. "Hazardous air pollutant" means an air contaminant that has been classified as a hazardous air pollutant pursuant to section 112 of the federal act.

F. "Operator" means the person or persons responsible for the overall operation of a facility.

G. "Owner" means the person or persons who own a facility or part of a facility.

H. "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

I. "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant.

[11/30/95; 20.2.71.7 NMAC - Rn, 20 NMAC 2.71.107 10/31/02; A, 12/15/04; A, 06/15/07]

20.2.71.112 EMISSION FEE

A. The fee for each fee pollutant shall be \$12.00 per ton on an annual basis, except as provided for in Subsection B of 20.2.70.112 NMAC. This fee shall increase to \$14.00 per ton on an annual basis for fees due June 1, 2006; to \$16.00 per ton on an annual basis for fees due June 1, 2007; and to \$18.00 per ton on an annual basis for fees due June 1, 2008 and thereafter.

B. The fee for each hazardous air pollutant shall be \$165.00 per ton on an annual basis for any stationary source which is only major as defined in 20.2.70 NMAC for any hazardous air pollutant.

C. Fees for mercury emissions.

(1) For the calendar years 2010 through 2017, the fee for mercury emissions from stationary sources subject to 20.2.85 NMAC shall be \$8.88 per ounce annually.

(2) For the calendar years 2018 and thereafter, the fee for mercury emis-

sions from stationary sources subject to 20.2.85 NMAC shall be \$22.51 per ounce annually.

~~[C-]~~ **D.** The fee per ton of emissions above annual allowable emission limits shall be identical to the fee per ton of allowable emissions.

~~[D-]~~ **E.** Beginning on January 1, 2009, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act.

[11/30/95; 20.2.71.112 NMAC - Rn, 20 NMAC 2.71.112 10/31/02; A, 12/15/04; A, 06/15/07]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

These are amendments to 20.2.77 NMAC, Sections 2, 9 and 10, to be effective June 15, 2007.

20.2.77.2 SCOPE: Any stationary source constructing or modifying and which is subject to the requirements of 40 CFR Part 60, as amended through ~~September 1, 2002~~ November 30, 2006.

[06/16/95, 11/19/97, 9/8/99; 20.2.77.2 NMAC - Rn 20 NMAC 2.77.101 & A, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/15/07]

20.2.77.9 ADOPTION OF 40 CFR PART 60: Except as otherwise provided, the new source performance standards as promulgated by the United States environmental protection agency, 40 CFR Part 60, as amended in the federal register through ~~September 1, 2002~~ November 30, 2006 are hereby incorporated into this part [20.2.77 NMAC].

[06/16/95, 08/02/96, 11/19/97, 09/08/99; 20.2.77.9 NMAC - Rn 20 NMAC 2.77.107 & A, 06/02/00; A, 02/18/02; A, 06/13/03; A, 06/15/07]

20.2.77.10 MODIFICATIONS AND EXCEPTIONS: The following modifications or exceptions are made to the incorporated federal standards^[+].

A. Amend 40 CFR Part 60, Section 60.2, Definitions, as follows: For the purposes of delegation of authority which the administrator of the United States environmental protection agency may, in his discretion, delegate to the secretary of the New Mexico environment department, "administrator" means the secretary of the department or his authorized representative.

B. Exclude 40 CFR - Part 60, Subpart AAA - Standards of

Performance for New Residential Wood Heaters.

C. The federal standards of performance incorporated by this regulation shall not be subject to NMSA 1978, Section 74-2-8 (Variances).

D. Exclude 40 CFR Part 60, Subpart HHHH, Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units. [06/16/95; 20.2.77.10 NMAC - Rn, 20 NMAC 2.77.108 06/23/00; A, 06/15/07]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.78 NMAC, Sections 2 and 9, to be effective June 8, 2007.

20.2.78.2 SCOPE: All sources emitting hazardous air pollutants which are subject to the requirements of 40 CFR Part 61, as amended through [~~September 1, 2004~~] November 30, 2006. [06/16/95, 11/19/97, 09/08/99; 20.2.78.2 NMAC - Rn 20 NMAC 2.78.101 & A, 06/23/00; A, 02/18/02; A, 06/08/07]

20.2.78.9 ADOPTION OF 40 CFR PART 61: Except as otherwise provided, the national emission standards for hazardous air pollutants as promulgated by the United States environmental protection agency, 40 CFR Part 61, as amended in the Federal Register through [~~September 1, 2004~~] November 30, 2006 are hereby incorporated into this part [20.2.78 NMAC]. [06/16/95, 08/02/96, 11/19/97, 09/08/99; 20.2.78.9 NMAC - Rn 20 NMAC 2.78.107 & A, 06/23/00; A, 02/18/02; A, 06/08/07]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.82 NMAC, Sections 2 and 8, to be effective June 8, 2007.

20.2.82.2 SCOPE: All sources emitting hazardous air pollutants, which are subject to the requirements of 40 CFR Part 63, as amended through [~~September 1, 2002~~] November 30, 2006. [Rn, 20 NMAC 2.82.2, 08/14/98; A, 08/14/98, 09/08/99; 20.2.82.2 NMAC - Rn 20 NMAC 2.82.101 & A, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/08/07]

20.2.82.8 ADOPTION OF 40 CFR PART 63: Except as otherwise provided in section 20.2.82.10 NMAC (below),

the national emission standards for hazardous air pollutants for source categories as promulgated by the US EPA, 40 CFR Part 63, as amended in the Federal Register through [~~September 1, 2002~~] November 30, 2006 are hereby incorporated into this part (20.2.82 NMAC).

[Rn, 20 NMAC 2.82.7, 08/14/98; A, 08/14/98, 09/08/99; 20.2.82.8 NMAC - Rn 20 NMAC 2.82.106 & A, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/08/07]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.84 NMAC, Section 8, to be effective June 15, 2007.

20.2.84.8 ADOPTION BY REFERENCE OF FEDERAL ACID RAIN PERMITTING REQUIREMENTS: Except as otherwise provided in 20.2.84.10 NMAC, the portions of the federal acid rain program promulgated by the United States environmental protection agency under 40 CFR Part 72 (including all portions of Parts 73, 74, 75, 77 and 78 referenced therein) and 76, and amended in the federal register through [~~March 10, 2000~~] May 18, 2005, to implement Sections 407 (nitrogen oxides emission reduction program), 408 (permits and compliance plans) and 412 (monitoring, reporting and recordkeeping requirements) of the federal act, are hereby incorporated into this part.

[20.2.84.8 NMAC - N, 06/15/00; A, 06/15/07]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency order to 19.31.4 NMAC, Section 20, effective May 12, 2007.

19.31.4.20 EMERGENCY ORDER FOR FISH SALVAGE: Under authority of 19.31.10.18 promulgated by the state game commission on September 15, 1994, I, BRUCE C. THOMPSON, director of the department of game and fish, hereby declare that an emergency exists within the Kid's Pond and Middle Pond at Tingley Beach in Bernalillo county. The extent to which, fish life may be destroyed by an infestation of Ichthyophthirius multifiliis, potentially causing death to catfish, trout, and other game fish. Also, the life cycle of the parasite will perpetuate unless the existence of potential hosts is greatly minimized. Given the short infectious period of this parasite, the potential exists that the life cycle could be greatly interrupted or com-

pletely broken if enough fish are removed. Bag limits on sport fish will be unlimited. Manner and method regulations relative to the Kid's Pond will also be suspended (allowing adults to fish in the kid's pond). The operating hours for Tingley Beach will remain in effect for the duration of this salvage order. This relaxation will go into effect at 12:00 a.m., May 12, 2007, and will remain in effect through 11:59 p.m., May 20, 2007.

[19.31.4.20 NMAC - N/E, 5-12-07]

NEW MEXICO GENERAL SERVICES DEPARTMENT RISK MANAGEMENT DIVISION

1.6.4 NMAC, State Loss Control Program (filed 9/1/2004) is hereby repealed and replaced by 1.6.4 NMAC, State Loss Prevention and Control Program, effective 7/1/2007.

NEW MEXICO GENERAL SERVICES DEPARTMENT RISK MANAGEMENT DIVISION

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 6 RISK MANAGEMENT
PART 4 STATE LOSS PREVENTION AND CONTROL PROGRAM**

1.6.4.1 ISSUING AGENCY: General Services Department - Risk Management Division. [1.6.4.1 NMAC - Rp, 1.6.4.1 NMAC, 7/1/2007]

1.6.4.2 SCOPE: Unless otherwise provided by law or by 1.6.4.16 NMAC below, this rule applies to all state agencies, including elected officials and institutions of higher learning. This rule supercedes and replaces all rules and directives for similar programs established by these entities, and shall be complied with by these entities. Loss prevention and control plans will not be acceptable unless they meet the total requirements of this rule and address the prevention and control requirements of all risk management division insurance coverage. [1.6.4.2 NMAC - Rp, 1.6.4.2 NMAC, 7/1/2007]

1.6.4.3 STATUTORY AUTHORITY: This rule is adopted pursuant to Section 15-7-3(A)(9) NMSA 1978 which empowers the risk management division to initiate the establishment of safety programs and to adopt regulations for effec-

tive implementation of these programs; and Section 9-17-5(E) NMSA 1978, which empowers the secretary of the general services department to adopt rules and regulations to accomplish the duties of the department and its divisions.

[1.6.4.3 NMAC - Rp, 1.6.4.3 NMAC, 7/1/2007]

1.6.4.4 DURATION:

Permanent.

[1.6.4.4 NMAC - N, 7/1/2007]

1.6.4.5 EFFECTIVE DATE:

July 1, 2007, unless a later date is cited at the end of a section.

[1.6.4.5 NMAC - Rp, 1.6.4.5 NMAC, 7/1/2007]

1.6.4.6 OBJECTIVE: The objectives of this rule (1.6.4 NMAC) are to:

A. provide general direction to state agencies in the prevention and control of insurable losses;

B. assure that loss prevention and control activities become an integral part of the job and the required training of each worker at each state agency;

C. assure that state agencies establish safety and loss prevention and control as a line management responsibility of high priority and report on the execution of this responsibility;

D. assure that state agencies demonstrate commitment to safety and loss prevention and control by development of a loss prevention and control plan and appointment of knowledgeable and experienced loss control personnel consistent with the guidelines and intent of this rule; and

E. assure compliance with this rule by reporting any failure to comply with this rule in the annual report of the risk management director to the state legislature (as required by 15-7-3(C) NMSA 1978), and to the governor, or any other oversight organization as may be required or appropriate, and by adjusting insurance premium rates paid by noncompliant agencies accordingly.

[1.6.4.6 NMAC - Rp, 1.6.4.6 NMAC, 7/1/2007]

1.6.4.7 DEFINITIONS: The following definitions apply in this rule.

A. "RMD" means the risk management division of the general services department.

B. "State loss control manager" means the state loss control manager of the RMD (as permitted by 15-7-3(A)(10) NMSA 1978).

C. "Agency" or "state agency" means any department, agency, branch, board, instrumentality or institution of New Mexico state government.

D. "Sub-agency" means

any major entity or program below the prime agency level that is still a part of the agency; e.g., division, district, institution, hospital, field office, etc.

E. "Committee" means any agency or sub-agency loss prevention and control committee.

F. "Loss prevention and control" means any managerial system or systems intended to identify potential or actual loss situations and the implementation of a strategy or strategies to prevent or manage losses. These systems work to achieve reduction in the frequency and costs associated with losses and the elimination of the causes which allow the losses to occur. Loss situations may be bodily injury, death, property damage, employment-related civil rights violations, or other types of potential or actual liability covered under insurance or self-insurance programs. Examples include, but are not limited to the following situations:

(1) a state employee who sustains injury by accident arising out of and in the course of employment (workers' compensation);

(2) a state employee who has an accident while driving a state vehicle on state business (auto liability and/or auto physical damage);

(3) a fire or other catastrophe which damages or destroys a state building (blanket property);

(4) a state doctor who performs a professional error during the course of patient treatment (medical professional liability);

(5) a law enforcement officer who arrests a person without proper legal authority (law enforcement liability);

(6) a patient who falls out of bed in a state hospital (medical professional liability);

(7) a visitor who sustains an injury in a state owned or occupied building as a result of state negligence (general liability);

(8) a state employee who improperly issues or awards a contract or who fails to send a required notice (public official and employee, errors and omissions);

(9) a state agency which violates a person's rights of hire or promotion because of his or her sex, race, color, national origin, age, religion, sexual orientation, sexual identity or disability (civil rights liability);

(10) a state board which fails to grant a hearing to a licensee of that board when the board is revoking his or her license for cause (civil rights liability);

(11) a public employee who mishandles public money in his control (fidelity and surety bond loss);

(12) a state vehicle which has been left unattended and is vandalized (auto physical damage);

(13) a state agency which fails to provide a job applicant or employee who is a qualified individual with a disability a reasonable accommodation (civil rights liability);

(14) a state employee who illegally sexually harasses another employee or creates a hostile environment (civil rights liability);

(15) a state agency which wrongfully terminates a state employee (civil rights liability);

(16) a state agency which illegally retaliates against a state employee who files a workers' compensation or equal employment opportunity claim (civil rights liability).

G. "Loss prevention and control coordinator" means the agency loss prevention and control coordinator appointed in accordance with procedures and duties defined in 1.6.4.9 NMAC.

H. "Self-inspection" means that part of a loss prevention and control plan which consists of agency or sub-agency efforts to identify, record and correct incidents, hazards or situations which have the potential to result in loss.

[1.6.4.7 NMAC - Rp, 1.6.4.7 NMAC, 7/1/2007]

1.6.4.8 LOSS PREVENTION AND CONTROL PROGRAM, CREATION:

A. The "state loss prevention and control program" is created. The program shall consist of all agency loss prevention and control plans and any loss prevention and control services provided by or implemented through the RMD. The program shall be administered and monitored by the RMD as provided in this rule.

B. Within sixty (60) days after the effective date of this rule, all requirements of this rule shall be incorporated into the agency loss prevention and control plan, that shall include, at a minimum, the following listed areas of claims management:

(1) appointment and duties of a loss prevention and control coordinator;

(2) appointment and duties of a loss prevention and control committee;

(3) self-inspection and audit procedures;

(4) incident and loss investigation, including record-keeping and reporting procedures;

(5) claims analysis and management procedures;

(6) loss prevention and control education and training;

(7) employee job orientation and training programs;

(8) implementation of safety and loss prevention and control initiatives;

(9) implementation of workplace

alternative dispute resolution and mediation program initiatives;

(10) periodic training, at least annually, of managers and supervisors on employment-related civil rights issues.

C. Each agency shall submit a copy of its plan and initial appointments to the state loss control manager. The names of appointees shall be noted by separate letter or exhibit to prevent plans from becoming obsolete due to personnel changes. Any changes in the program or appointments shall be submitted in writing to the state loss control manager.

D. If any agency fails to adopt and promulgate an agency loss prevention and control plan in accordance with this rule, the state loss control manager shall report this matter to the agency head, in writing, with copies to the general services department cabinet secretary and the director of the risk management division.

E. The state loss control manager shall provide a "model" loss prevention and control plan that may be used by each agency as guidance in drafting its loss prevention and control plan.

[1.6.4.8 NMAC - Rp, 1.6.4.8 NMAC, 7/1/2007]

1.6.4.9 LOSS PREVENTION AND CONTROL COORDINATOR, DUTIES:

A. The head of each agency shall appoint a loss prevention and control coordinator, knowledgeable and experienced in loss prevention and control, for:

- (1) the agency;
- (2) each agency division; and
- (3) field locations responsible to the agency head; e.g., corrections institutions, medical facilities, districts, parks, etc.

B. The loss prevention and control coordinator shall conduct and coordinate the agency's loss prevention and control program. The loss prevention and control coordinator's duties shall be specified in the loss prevention and control plan at each of the different levels described in Subsection A of 1.6.4.9 NMAC. At a minimum, the plan shall require each loss prevention and control coordinator to:

(1) serve as a member on the agency, division or other level loss prevention and control committee;

(2) report to the agency head on matters pertaining to management of the loss prevention and control program, safety, employment-related civil rights issues, or any other matters of potential or actual liability within the agency;

(3) chair and coordinate the agency safety committee;

(4) act as liaison with the state loss control manager and other loss preven-

tion and control coordinators, both within and outside the agency, on loss prevention and control matters;

(5) establish or interpret and apply policies and procedures to guide the agency in loss prevention and control;

(6) review agency loss claims and make recommendations to prevent future losses;

(7) organize, supervise and assist the agency, sub-agency, division or other level, in self-inspection and audit procedures; loss prevention and control coordinators shall develop, use and make available appropriate checklists for self-inspection and audit procedures;

(8) monitor and, where appropriate, aid in the investigation and reporting of incidents and losses, including receiving, recording and analyzing loss information for statistical purposes; loss prevention and control coordinators may conduct their own investigation and analysis of any incident or loss where necessary to determine the cause and prevent recurrence;

(9) make loss prevention and control presentations to agency personnel addressing such issues as statistical data records and analysis, training, incident and loss prevention and control, and other relevant matter;

(10) provide technical information to employees and agency management concerning the New Mexico Occupational Health and Safety Act requirements, as well as RMD policies, procedures and rules;

(11) conduct loss prevention and control training, and assess the adequacy of such training;

(12) conduct new employee orientation training to address agency loss prevention and control goals, policies and procedures; and

(13) report all required information to the state loss control manager, including updated agency loss prevention and control plans, and copies of minutes from quarterly loss control committee meetings (within 30 days of occurrence).

C. Loss prevention and control functions are most productive when they are full time in scope and responsibility due to an ever-changing risk environment and continuing public concerns and expectations that loss prevention and control be actively and effectively managed.

[1.6.4.9 NMAC - Rp, 1.6.4.9 NMAC, 7/1/2007]

1.6.4.10 LOSS PREVENTION AND CONTROL COMMITTEE, DUTIES:

A. A "loss prevention and control committee" shall be created in each state agency. In addition, an agency loss prevention and control plan may provide for

committees at division or other appropriate levels.

B. The head of an agency, in the case of an agency committee, and the head of a sub-agency, division or other level, in the case of lower level committees, shall appoint the committee members. In appointing agency committee members, the appointing authority shall attempt to appoint division directors, bureau chiefs and section or unit heads. All major components of an agency's organizational structure shall be represented on the agency committee.

C. Each committee shall elect a chairperson and a secretary from among the committee members annually.

D. Each committee shall hold meetings at least quarterly. Special meetings may be convened at the call of the chairperson or a majority of the committee members. The committee secretary shall keep minutes of the proceedings. Agency minutes shall be approved and signed by the agency head or their designee, and a copy of the agency minutes shall be distributed to all committee members and forwarded to the state loss control manager within thirty (30) days following the loss prevention and control committee meeting. Copies of minutes from lower level committees, if any, shall be provided to the agency loss prevention and control coordinator. Committee meetings may be incorporated into regular agency staff meetings including those at the division or other levels, however, a specific block of staff meeting time must be allocated exclusively to committee business. Additionally, the committee secretary shall record minutes devoted exclusively to committee business.

E. Each agency head shall establish the agency committee's duties as part of the agency loss prevention and control plan. Committees at the division or other levels shall have similar duties. An agency committee's duties shall include, but are not limited to the following loss prevention and control duties:

(1) compile, analyze, and evaluate agency loss information to ensure adequate measures are being taken to prevent recurrence of the same or similar losses; where such measures are not adequate, the committee shall make recommendations to the agency head or initiate additional action, as appropriate;

(2) establish, evaluate and make recommendations for improvement of agency loss prevention and control activities; for purposes of evaluation, the committee may use agency self-inspection reports, RMD audits, other surveys, other guidelines, minutes and written or oral reports from division committees, and any other information the committee considers

useful and appropriate;

(3) perform any other functions the committee considers useful and appropriate, and which are consistent with the agency loss prevention and control plan.

[1.6.4.10 NMAC - Rp, 1.6.4.10 NMAC, 7/1/2007]

1.6.4.11 SELF INSPECTION AND AUDIT REQUIREMENTS:

A. Each state agency shall implement and execute effective self-inspection and audit programs as part of the agency's loss prevention and control plan. Self inspection and audit procedures shall be accomplished at every agency level and shall extend to all agency operations. Self inspection and audit of each agency operation should be conducted as often as needed or required, but at least semiannually.

B. Loss prevention and control coordinators at all agency levels shall ensure that appropriate checklists are developed and used for self-inspection and audit purposes. Checklists should be tailored to the work site or environment being inspected, should be specific as to the conditions being inspected and should be easy to use. Checklists should not be limited to physical hazards, but should also address operational procedures or actions which might result in loss; e.g., procedures and activities which might result in violation of a person's constitutional rights. Other examples are: unsafe work practices resulting from incorrect and/or non-existent procedures, a poor quality work product due to improper management controls, unwritten or poorly communicated employment policies, or inconsistent application of employment policies and practices. In addition, checklists should include assessment of employment conditions, policies and practices using standards established by regulatory authorities in the jurisdiction or industry, loss prevention and control criteria, and generally accepted "best practices" as a baseline.

C. RMD shall maintain and make available a set of general guidelines for initiating and developing loss prevention and control self-inspections and audits. The information is not a complete listing, but is intended to be used by agencies' loss control coordinators and committees as a guide for developing and compiling their own self inspection checklists and audit procedures specific to their individual agency's needs. The material may also be used as training material. RMD's general guidelines shall include: samples of inspection, audit and reporting procedures and forms; information on applicable legal or industry standards; and, information on issues of particular concern or loss potential. Loss control coordinators and committees may obtain complete information from

pertinent federal, state and local statutes, rules and regulations, manuals and texts on industry standards, OSHA requirements, fire protection codes and standards, pertinent technical data, department of labor (DOL) rules and regulations, equal employment opportunity commission (EEOC) and state human rights division guidelines, reference texts on federal and state employment law, other controlling authorities, etc.

D. A written report shall be made of all unsatisfactory conditions observed during self inspection or audit; the report shall include information on issues of particular concern or loss potential. In many cases, the checklist may serve as the report or audit. A copy of all self-inspection reports and agency audits shall be furnished to the agency loss prevention and control coordinator. Repeat deficiencies shall be identified as such and shall be brought to the attention of the committee and the agency head. For each noted unsatisfactory condition, corrective action shall be taken or initiated as soon as possible. A written response shall be made describing the corrective action taken or the action plan intended to address the issue. The supervisory person most immediately responsible for the operation in which the unsatisfactory condition is found shall write the response as promptly as possible, but no later than thirty (30) days of the time the condition is brought to his or her attention. Corrective action documentation shall be attached to the self-inspection report or audit. A copy shall be furnished to the agency loss prevention and control coordinator, who shall keep such records consistent with agency and state policy.

E. Records created pursuant to Subsection A through D of 1.6.4.11 NMAC shall be available for risk management division review for purposes of study (pursuant to 15-7-3(A)(8) NMSA 1978) and consultation (15-7-3(A)(11) NMSA 1978). As may be permitted by law, records may also be subject to review by, or protected from disclosure to, other regulatory authorities, or to others as permitted by law, subject to the exceptions and provisions contained in the Inspection of Public Records Act (Sections 14-2-1 and following NMSA 1978).

[1.6.4.11 NMAC - Rp, 1.6.4.11 NMAC, 7/1/2007]

1.6.4.12 INCIDENT AND LOSS INVESTIGATION:

A. Each state agency shall establish and implement procedures for in-depth investigation, analysis, and evaluation of incidents and losses as part of the agency's loss prevention and control plan. The procedures shall provide that incidents and losses be thoroughly investigated by the supervisory person most immediately

responsible for the operation in which the loss occurred, by an individual who has been trained to perform this type of work, or both. The investigation shall be initiated as soon as possible, but within two workdays. The investigation will be documented into a written format which will describe or provide incident data relevant to the following minimum phases:

(1) investigative facts;

(2) the investigator's analysis, based upon investigative findings, as to the immediate and root causes of the loss;

(3) the investigator's recommendations for correcting the problem or preventing further losses of the same kind; and

(4) all supplemental investigative data such as statements, other reports, photos, sketches, etc.

B. A copy of the investigative report shall be furnished to the investigator's immediate supervisor, to the agency loss prevention and control coordinator, and to the division, or other level loss prevention and control coordinator. Care must be exercised in the handling of confidential investigative material.

C. Investigations pertinent to an alleged job-related injury or illness and all necessary and supplemental documentation generated as a result of investigating such a claim will become a part of the injury or illness claim record.

D. If the quantity or complexity of incidents and losses makes loss investigation too great a burden on an individual supervisor, the duty to investigate may be delegated, with the agency head's approval, to an appropriate individual. The supervisor should review each report prepared by another investigator and document his or her comments on the adequacy of findings and the recommended corrective actions as part of the report.

E. The agency loss prevention and control coordinator shall evaluate the adequacy of the action taken to avoid recurrence of losses. The evaluation will be accomplished within thirty (30) days of receipt. The evaluation shall be provided to the loss prevention and control committee and to the supervisor responsible for the report.

F. Agency heads shall ensure that findings and corrective actions affecting one activity of the agency are communicated to and implemented in all other activities or programs of that agency.

G. Any investigations and reports prepared pursuant to this section are supplementary to and do not replace reports required to comply with state and federal laws, insurance and other mandatory reporting requirements. Wherever possible, efforts to meet the requirements of this rule and other applicable laws should be combined.

[1.6.4.12 NMAC - Rp, 1.6.4.12 NMAC, 7/1/2007]

1.6.4.13 LOSS PREVENTION AND CONTROL TRAINING:

A. In order that all employees better understand why losses occur and how such losses can be avoided, each agency shall provide safety and loss prevention and control and employment-related civil rights training to its employees on at least an annual basis. This type of training can be in the form of crew meetings, staff meetings, written correspondence, analysis reports or formal training. Integration of this training with other training programs is encouraged. Any formal safety or loss prevention and control training shall be documented and made a part of an employee's training file.

B. The supervisor is in the best position to relate pertinent loss prevention and control information to the worker. The supervisor must discuss loss prevention and control policies, procedures, and strategies with employees, individually and at group training sessions.

C. Training in the safe and correct way to do every job is critical to loss prevention and control and must be fully covered in initial employee orientations and continued training.

D. The New Mexico Occupational Health and Safety Act and other applicable laws and regulations, mandate certain employee protections against injury or illness on the job. Training on these provisions must be included in loss prevention and control training on a continuing basis.

E. Training in employment-related civil rights is critical to loss prevention and control and provides managers and supervisors with techniques necessary for treating all state employees in a fair and consistent manner.

F. Federal law, including, Title VII of the Civil Rights Act, and state law, including the Human Rights Act (Sections 28-1-1 and following NMSA 1978), and other applicable laws and regulations, protect against civil rights violations on the job. Training on these provisions must be included in loss prevention and control training on a continuing basis.

G. A summary of losses occurring within the department or agency, and analysis and an explanation of why the losses are occurring, shall be used to supplement safety and loss prevention and control training whenever possible. The summary should be distributed to department management and supervisory personnel at least annually.

[1.6.4.13 NMAC - Rp, 1.6.4.13 NMAC, 7/1/2007]

1.6.4.14 JOB-RELATED INJURY OR ILLNESS CLAIMS MANAGEMENT:

A. The high incidence of this type loss in terms of productivity, quality of work, training, hiring, administrative costs and benefits attributed to job-related injury or illness claims warrants special mention and demands close managerial control.

B. Each agency head shall establish a workers' compensation claims management policy and implementing programs that comply with relevant laws and regulations, the mandates of this rule, executive orders, mandates from the workers' compensation administration, state safety and loss prevention and control initiatives and other appropriate requirements. Each agency shall have written policies regarding:

- (1) workers' compensation claims management procedures;
- (2) early return to work procedures for workers with job-related injuries or illnesses; and
- (3) new employee orientation programs to include job safety, workers' compensation, and employment-related civil rights.

C. Each agency shall have individual and specific written policies providing for the following items, as they apply to job-related injury or illness claims:

- (1) establishment of safety and loss prevention and control as line management responsibilities of high priority and evaluate on the execution of these responsibilities; standards shall be in writing at the agency level;
- (2) training, appropriate to each supervisor, on the supervisor's role and what the supervisor is responsible for accomplishing;
- (3) assignment of an individual or individuals, at the agency level, responsible for maintaining complete job-related injury and illness claim records for the purpose of upkeep, monitoring, and analysis and for providing management information data; sub-agencies are also required to maintain job-related injury and illness records; the names of these individuals are to be submitted to the state loss control manager of the RMD; these same persons will be the agency contacts for the RMD workers' compensation bureau;
- (4) mandatory information: claims records retained by the agency or sub-agency and submitted to the RMD workers' compensation bureau shall contain the following mandatory documents:

- (a) notice of accident (WCA form NOA-1, as may be amended);
- (b) employer's first report of injury or illness (WCA form E1.2, as may

be amended);

(c) authorization to release medical information (WCA mandatory form, per Subparagraph (c) of Paragraph (2) of Subsection R of 11.4.4.9 NMAC, as may be amended);

(5) other information: claims records retained by the agency or sub-agency and submitted to the RMD workers' compensation bureau may contain the following documents, if appropriate or applicable to the job-related injury or illness situation:

- (a) doctor's visit form (or similar record of information);
- (b) injured employee and witness statements;
- (c) supervisor's investigation report;
- (d) safety specialist or loss prevention and control coordinator investigation report;
- (e) follow-up action documents;
- (f) adjuster's and medical provider's documents; and
- (g) photographs and sketches, as appropriate.

D. In formulating the policies required by this rule Paragraphs (1), (2) and (3) of Subsection B of 1.6.4.14 NMAC, each agency shall ensure the policies address and include direction for the following items:

- (1) injured employee responsibilities: this criterion shall include, at a minimum, injury reporting procedures, administration and documentation details, and compliance with medical treatment plan;
- (2) employer responsibilities: this criterion shall include, at minimum, job-related injury or illness reactive procedures, contact protocol, employer involvement in all phases of job-related injury or illness claim management, and accountability measures;
- (3) identification of jobs or the modification of jobs to accommodate the job-related injured or ill worker who is placed on restricted or modified work status; this criterion shall also include the procedures and authorities to implement such procedures;
- (4) identification and analysis of root causes of job-related injury or illness and recommended corrective action or change to prevent recurrence of such job-related illness or injury.

E. Every effort shall be made to implement an early return to work program that includes, at a minimum, the requirements of Section 52-1-25.1 NMSA 1978. To ensure that sound claims management procedures have been accomplished and that reasonable accommodations and opportunities afforded by applicable legal mandates have been explored, no state

employee shall be terminated from employment because of a job-related injury or illness or physical circumstances resulting from a job-related injury or illness unless the state agency has provided advance notice to the state risk management division, attention: workers' compensation claims specialist.

F. Except as provided in Paragraphs (1) and (2) of this subsection, vacant positions resulting from job related injuries or illnesses shall not be filled, except by temporary employment.

(1) A position may be permanently filled if there is documented medical diagnosis or evidence that an employee with a job-related injury or illness has reached maximum medical improvement or that the employee's impairment or condition is permanent and that the employee cannot perform the essential functions of the particular job.

(2) A position may be permanently filled if there is a critical need and that need cannot be satisfied with temporary employment, and the agency has made a "good faith" effort to do so, and the provisions of Subsection E of this section have been satisfied.

G. The state loss control manager and the workers' compensation claims specialist of the RMD, or their designees, shall provide "model" programs, policies and supplemental materials that may be used by each agency as guidance in creating programs and drafting policies. [1.6.4.14 NMAC - Rp, 1.6.4.14 NMAC, 7/1/2007]

1.6.4.15 RISK MANAGEMENT DIVISION AGENCY LOSS PREVENTION AND CONTROL PLAN AUDIT:

A. The state loss control manager or persons designated by the state loss control manager shall conduct loss prevention and control plan audits of state agencies as a method of providing agency heads with an evaluation of the effectiveness of an agency's total loss prevention and control effort. The audits shall take place with such frequency as the director of the RMD deems necessary. Following an audit, the state loss control manager shall submit a written report to the agency head which will provide an evaluation of the agency's loss prevention and control effort along with recommendations.

B. The agency head (or the sub-agency head if the audit applies only to a sub-agency) shall respond to RMD audits within thirty (30) days citing what actions have been taken to address the issues and the recommendations noted in the report.

C. The state loss control manager shall provide assistance to state agencies in developing and implementing

their loss prevention and control plans. The state loss control manager shall:

(1) provide a "model" of an actual state agency loss prevention and control plan (for use in drafting individual agency loss prevention and control plans, which shall satisfy individual agency missions and meet individual agency needs);

(2) provide "model" self-inspection checklists (see RMD general guidelines referenced in Subsection C of 1.6.4.11 NMAC established for this purpose);

(3) as part of an audit procedure, provide agencies with loss information from RMD claim reports; the state loss control manager (or the state loss control manager's designee) shall assist agencies in the interpretation of and the use of RMD reports and other loss information;

(4) provide general information to assist in incident and loss investigations;

(5) in coordination with the secretary of the general services department and the director of the risk management division, develop programs, policies and procedures which will further enhance the ongoing state loss prevention and control program effort.

[1.6.4.15 NMAC - Rp, 1.6.4.15 NMAC, 7/1/2007]

1.6.4.16 LOSS PREVENTION AND CONTROL PROGRAM, EXEMPTION REQUIREMENTS:

A. In special circumstances and for good cause, the RMD director may exempt a state agency, or a portion of an agency, from any or all parts of this rule.

B. All agencies that have a loss prevention and control program exemption prior to the effective date of this rule must re-qualify for an exemption within sixty (60) days of the effective date of this rule.

C. Requests for exemption shall be made to the RMD director, in writing, stating the extent of and the justification for the request. The RMD director shall base the decision to grant or deny the request for exemption on the following:

(1) the size of the requesting agency;

(2) the need, or lack thereof, for the loss prevention and control program, or portions of the program, in the requesting agency;

(3) the costs versus the benefits that can reasonably be expected to be derived from the loss prevention and control program; and

(4) any other matters that the director, in his or her sole discretion, reasonably believes to be relevant.

D. The RMD director shall grant or deny the exemption in writing, stating the reasons for the decision. The

exemption may be granted, at the discretion of the RMD director, in a modified form. Exemptions shall be for a specified period of time, not to exceed two (2) years. At the end of such time, any exemptions shall automatically expire unless the agency has made written application to the RMD director for an additional extension at least ninety (90) days prior to the expiration, in which case, expiration shall be postponed pending the RMD director's decision to grant or deny the additional extension. Additional extensions are subject to the same time constraints as the initial extension. In addition, an exemption will automatically expire if the agency full time employee (FTE) structure is significantly increased.

[1.6.4.16 NMAC - Rp, 1.6.4.16 NMAC, 7/1/2007]

HISTORY OF 1.6.4 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 as: GSD 84-703 State Loss Control Program, 4/4/84; GSD 86-703 State Loss Control Program, 6/30/86; and GSD 91-703 State Loss Control Program, 11/14/91.

History of Repealed Material: 1.6.4 NMAC, State Loss Control Program (filed 09/01/2004) repealed 7/1/2007.

Other History:

GSD 91-703 State Loss Control Program (filed 11/14/91) was reformatted and renumbered to 1.6.4 NMAC, State Loss Control Program, to comply with the current NMAC requirements, effective 9/15/2004.

1.6.4 NMAC, State Loss Control Program (filed 9/1/2004) was replaced by 1.6.4 NMAC, State Loss Prevention and Control Program, effective 7/1/2007.

NEW MEXICO DEPARTMENT OF HEALTH BEHAVIORAL HEALTH SERVICES DIVISION

TITLE 7 HEALTH CHAPTER 20 MENTAL HEALTH PART 4 BEHAVIORAL HEALTH CAPITAL FUND PROGRAM

7.20.4.1 ISSUING AGENCY:
New Mexico Department of Health - Behavioral Health Services Division.
[7.20.4.1 NMAC - N, 05-31-07]

7.20.4.2 SCOPE: The behavioral health capital fund program rule shall apply to the use of funds by eligible entities available pursuant to the Behavioral Health Capital Funding Act, Sections 6-26-1., et seq., NMSA 1978.
[7.20.4.2 NMAC - N, 05-31-07]

7.20.4.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to: 1) the Department of Health Act, Section 9-7-6.E., NMSA 1978; 2) the Behavioral Health Capital Funding Act, Sections 6-26-1., et seq., NMSA 1978.
[7.20.4.3 NMAC - N, 05-31-07]

7.20.4.4 DURATION: Permanent.
[7.20.4.4 NMAC - N, 05-31-07]

7.20.4.5 EFFECTIVE DATE: 05-31-07, unless a later date is cited at the end of a section.
[7.20.4.5 NMAC - N, 05-31-07]

7.20.4.6 OBJECTIVE: The objective is to establish standards and procedures for regulating programs under the Behavioral Health Capital Funding Act. Section 6-26-5 NMSA 1978 of the Behavioral Health Capital Funding Act directs the department of health and the New Mexico finance authority jointly to develop and administer a loan program established pursuant to the provisions of the act.
[7.20.4.6 NMAC - N, 05-31-07]

7.20.4.7 DEFINITIONS:

A. "Act" means the Behavioral Health Capital Funding Act (Sections 6-26-1 to 6-26-8 NMSA 1978).

B. "Agreement" means the document or documents signed by the board and the eligible entity receiving a loan that specifies the terms and conditions of obtaining the loan under the program.

C. "Applicant" means an eligible entity that has filed a request for a loan with the department and the authority.

D. "Application" means a written document filed with the department and the authority by an applicant for the purpose of obtaining a loan. An application may include a form prescribed by the department and the authority, written responses to requests for information by the department and the authority, or other format as determined by the department and the authority.

E. "Application committee" means a six-member body, three members appointed by the chief executive officer of the authority from the authority staff and three members appointed by the department from the department staff.

F. "Authority" means the New Mexico finance authority.

G. "Authorized representative" means one or more individuals authorized by the governing body of an eligible entity to act on behalf of the eligible entity in connection with its application. An authorized representative may act on behalf of the eligible entity to the extent provided by law.

H. "Behavioral health care" means a comprehensive array of professional and ancillary services for the treatment of mental illnesses, substance abuse disorders and/or trauma spectrum disorders.

I. "Behavioral health service provider" means an individual or an agency licensed or certified by or receiving funds under contract with the New Mexico department of health for the provision of behavioral health services.

J. "Behavioral health care facility" means a facility operated by a behavioral health service provider.

K. "Board" means the New Mexico finance authority board, as created by and set forth in the bylaws of the authority.

L. "Department" means the New Mexico department of health.

M. "Eligible entity" means a provider that meets the statutory definition of "eligible entity" provided for in the act.

N. "Loan" means a loan made by the authority to an applicant under the program for the funding of a project.

O. "Fund" means the behavioral health capital fund.

P. "Program" means the behavioral health capital fund program authorized by the act.

Q. "Project" means repair, renovation or construction of a behavioral health care facility, purchase of land, or the acquisition of capital equipment of a long-term nature. The following items shall be eligible or ineligible for purposes of funding through a loan:

(1) eligible for funding:

(a) building, construction, renovation;

(b) land;

(c) project planning and design;

(d) purchase of capital equipment;

(2) ineligible for funding:

(a) purchase of office supplies;

(b) general operating expenses.

R. "Sick and medically indigent" means both those individuals below the federal poverty level not covered by private third party health care insurance and those individuals between 100% and 200% of federal poverty levels who are not covered by any private third party health insurance. Medically indigent individuals

are usually expected to pay for some portion of the cost of their health care based upon the level of their income.

[7.20.4.7 NMAC - N, 05-31-07]

7.20.4.8 LOAN APPLICATION PROCEDURES:

A. Contingent upon a sufficient balance in the fund, the department and the authority may accept applications at any point during the state fiscal year.

B. The department and the authority will provide forms and/or guidelines for a loan application and applications must be submitted on that form. The application shall be signed by the authorized representative and submitted to the department. Only applications that are complete will be considered for a loan. The application shall include the following.

(1) The amount of the loan requested and an itemization of the proposed use or uses of the loan.

(2) A detailed description of the circumstances that demonstrate the need for the project, including:

(a) the eligibility of the applicant;

(b) the programmatic appropriateness;

(c) the facility's need;

(d) the needs of community.

(3) A detailed description of the project, including:

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

(b) the estimated cost of the project;

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

(d) the estimated useful life of the project and selected components (furnishings, equipment, etc.), as detailed on the application form;

(e) proof of applicable licenses and certifications; and

(f) other data as requested by the department or the authority.

(4) A copy of the applicant's articles of incorporation and by-laws and a certificate of good standing from the New Mexico public regulation commission.

(5) A copy of the applicant's internal revenue service tax exempt determination letter.

(6) A letter certifying that the project was duly authorized and approved by the applicant's governing body.

(7) The identification of the source of funds for repayment of the loan and the source of funds to operate and maintain the project over its useful life.

(8) The applicant's audited financial reports for the most recent five years, or term of existence, along with its projected cash flows for five years.

(9) The requested loan payback period.

(10) Any existing title insurance policies, title abstracts or searches of the real property owned by the applicant.

(11) Information on the current and proposed services of the applicant to the sick and medically indigent.

(12) Additional information as requested by the department or the authority that is requested at any point in the application process.

[7.20.4.8 NMAC - N, 05-31-07]

7.20.4.9 EVALUATION OF APPLICANT AND PROJECT BY DEPARTMENT AND THE APPLICATION COMMITTEE:

A. The department will determine whether an application is complete. Once the application is complete, the department will evaluate the application for eligibility and will determine the programmatic priority of the project.

B. To be eligible for a loan, an eligible entity must:

(1) be a provider or facility that meets the statutory definition of "eligible entity" provided for in the act;

(2) have policies and procedures that assure that no person will be denied services because of inability to pay; these policies and procedures must address the medically indigent persons below poverty not covered by third party payors and those between 100% and 200% of poverty without third party coverage; the eligible entity must be able to demonstrate either the successful impact of these policies and procedures, or have a practical plan for their implementation;

(3) have billing policies and procedures that maximize patient collections except where federal rules or contractual obligations prohibit the use of such measures; the eligible entity must be able to demonstrate either the successful impact of these policies and procedures, or have a practical plan for their implementation;

(4) provide evidence satisfactory to the authority that it has proper title, easements, leases, and right of ways to the property upon which any facility proposed for funding is constructed or improved;

(5) comply with all applicable federal, state, and local laws and rules;

(6) meet other requirements as determined by the department.

C. The department shall determine the priority for loans from the fund. Priority shall be based on:

(1) community need and support, including but not limited to the identification of other financing;

(2) facility or equipment need;

(3) the appropriateness of the project;

(4) the ability of an applicant to maintain behavioral health care services;

(5) whether making the loan would help achieve the goal of a fair geographic distribution of loans; and,

(6) other factors, as determined by the department.

D. Upon completion of its evaluation of eligibility and its determination of programmatic priority, the department will refer the applications to the application committee. The application committee will evaluate the project. The application committee may confer with outside parties as necessary to obtain more information on the feasibility of the project, the applicant's administrative capacity, and the applicant's readiness to proceed. The application committee will make a written recommendation to the authority. The recommendation will include approval or disapproval of specific projects and the estimated costs of the projects. The recommendation may include recommendations for loan covenants needed for programmatic reasons and adjustments to the department's programmatic prioritization of loans.

E. Although the department and the authority will analyze each project to determine whether the project is feasible, a loan by the authority does not constitute a warranty or other guarantee as to the feasibility of the project and the authority shall not have any responsibility or liability with respect to any project.

[7.20.4.9 NMAC - N, 05-31-07]

7.20.4.10 FINANCING APPROVAL BY THE AUTHORITY:

A. The authority will perform an independent financial analysis of each application. In evaluating an application, the authority will consider:

(1) The applicant's demonstration that the excess of public support and revenues over expenses for the most recent fiscal year or the projected amount for the fiscal year after the project's completion (after adding back annual depreciation and interest) will provide sufficient coverage of the previous year's annual debt service and sufficient coverage of projected maximum annual debt service after accounting for the loan.

(2) The ability of the applicant to secure financing from other sources and the costs of the loan.

(3) The recommendations of the application committee.

B. The evaluation must include a finding that the useful life of the project will meet or exceed the final maturity of the loan and must meet standards for reasonable costs set by the board.

C. The evaluation must include a finding by the authority that there is adequate protection, including loan guar-

antees, real property liens, title insurance, security interests in or pledges of accounts and other assets, loan covenants and warranties or restrictions or other encumbrances and pledges for the state funds extended for the loan.

D. The applicant must agree, and such agreement may be included in the agreement at the request of the board:

(1) to maintain separate project accounts in accordance with generally accepted accounting principles and to conduct an annual audit of the project's financial records during the term of the loan; and

(2) to satisfy any other requirements as may be determined by the authority.

E. Once a recommendation has been made on the application by the authority staff, the board will act on the application and any associated loan documents or agreements no later than the next regular board meeting at which such item may be properly considered. The board may approve all or part of the application as recommended by the authority staff. Board approval may specify, at the board's discretion, terms and conditions of the loan as necessary to ensure repayment, including but not limited to, maximum loan term and maximum annual payments.

F. The authority will notify the applicant of the approval or disapproval of its application by telephone and will mail written notification by certified mail within seven working days of board action.

G. All communications regarding an eligible entity's original application shall be directed to the department.

[7.20.4.10 NMAC - N, 05-31-07]

7.20.4.11 RECONSIDERATION:

A. Decision by department as to eligibility. An applicant may request reconsideration of a contrary decision by the department as to whether it is an eligible entity as defined by the act and under these rules. Notice must be given to the department in writing within ten (10) working days of receipt of the department's decision as to eligibility. A request for reconsideration not timely or properly made will be barred. The department's secretary will promptly review each timely request for reconsideration. The decision of the department secretary is final. If the decision of the department secretary differs from the decision of the department as to an applicant's eligibility, evaluation of the application shall be resumed by the department based on the decision of the department secretary.

B. Decision by board as to funding. An applicant may request reconsideration of a decision by the board denying funding to an eligible entity by notifying

the authority in writing within forty-five days of the date on which the authority gives notice of an adverse decision to an applicant. Notice of an adverse decision is deemed to be given on the fifth business day following the date on which written notice of the adverse decision is mailed to the applicant by the authority by certified United States mail. A request for reconsideration is deemed to have been given on the fifth business day following the date on which the request is mailed to the authority. A request for reconsideration not timely or properly made will be barred. The authority's chief executive officer will promptly review each timely request for reconsideration and will recommend, at the next regular meeting of the board, action to be taken by the board. The board will review and take action on the request for reconsideration and will notify the applicant of the board's decision, in writing, within five working days of the board's decision. The decision of the board is final.

[7.20.4.11 NMAC - N, 05-31-07]

7.20.4.12 LOAN DOCUMENTS AND AGREEMENT:

A. The authority and the eligible entity will enter into an agreement and any other applicable documentation to establish the terms and conditions of the loan. The agreement will include the terms of repayment and remedies and sanctions available to the authority in the event of a default. The authority will monitor and enforce the terms and conditions of the agreement, including prompt notice and collection. In consultation with the department, the authority will take actions as necessary to ensure loan repayment and the integrity of the fund. The authority will not monitor the performance of an eligible entity under department credentialing and/or licensure requirements nor for programmatic requirements and will not make site visits. The department will monitor the performance of an eligible entity under department credentialing and/or licensure requirements and for programmatic requirements and will make the necessary site visits. The authority will not be responsible for any act or omission of the applicant upon which any claim, by or on behalf of any person, firm, corporation or other legal entity, may be made, arising from the loan or any establishment or modification of the project or otherwise.

B. The board will establish the interest rate for loans. The board will set the rate at the lowest legally permissible interest rate. The interest rate shall not change during the term of the loan unless refinanced.

C. The agreement will contain provisions that require that.

(1) The applicant complies with all applicable federal, state and local laws and rules.

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

(3) The applicant shall require any contractor of a project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978 and its subsequent amendments and successor provisions.

D. The authority shall ensure the state's interest in any project by filing a lien equal to the total of the authority's financial participation in the project.

E. If land is to be purchased with a loan from the fund, the applicant shall provide evidence satisfactory to the authority that the title is merchantable and free and clear from liens or encumbrances. The authority shall also require that a title insurance policy insuring the authority's interest as a first lien be obtained as a condition of making the loan. The eligible entity shall not encumber the land purchased by granting or creating any additional security interest in the land while any amount of the loan is unpaid. The eligible entity shall pay immediately any encumbrance or lien against the land that attaches while any amount of the loan is unpaid.

F. If any repayment of a loan is more than 30 days past due, or if the eligible entity is in default on any other conditions as defined under the loan agreement, the authority and the department will report to each other and to the application committee as to the borrower's then current status as it relates to the loan, including credentialing or licensure status and any reported or known violations of applicable laws or rules to which the facility is subject and any known change in financial status. The department may develop workout plans in conjunction with the application committee for any borrower who maintains eligibility as defined in NMSA 1978 Section 6-26-3 D, but is more than 60 days past due in loan repayment. The authority may develop workout plans in conjunction with the application committee for any borrower who ceases to maintain eligibility as defined in NMSA 1978 Section 6-26-3 D and is more than 60 days past due in loan repayments. Any such workout plan and its implementation is in addition to and not instead of the courses of actions, remedies and sanctions available separately to the department or the authority under the act, these rules or the agreement or in any other manner available by law.

G. If an eligible entity that has received a loan for a project ceases to maintain its nonprofit status or ceases to deliver behavioral health services at the site of the project for twelve consecutive months, the authority may pursue the remedies provided in the loan agreement or as provided by law.

H. If an eligible entity has received a loan for a project, the loan may be renegotiated if the entity is still eligible but has had a change in financial status.

I. In the event of default by the borrower, the authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

[7.20.4.12 NMAC - N, 05-31-07]

7.20.4.13 ADMINISTRATION OF THE BEHAVIORAL HEALTH CAPITAL FUND:

A. The fund shall be administered by the authority as a separate account, but may consist of such sub accounts as the authority deems necessary to carry out the purposes of the fund.

B. Money from repayments of loans or payments on securities held by the authority for projects authorized specifically by law shall be deposited in the fund. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of financing projects authorized specifically by law.

C. The authority shall adopt a uniform accounting system for the fund and related accounts and sub-accounts established by the authority, based on generally accepted accounting principles.

[7.20.4.13 NMAC - N, 05-31-07]

History of 7.20.4 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.235.400 NMAC, Sections 7, 16 and 17, which will be effective on June 1, 2007. The Medical Assistance Division amended the sections to restrict eligibility for family planning medicaid to women who do not have other creditable health insurance coverage and who are between the ages of 19 and 44 years.

8.235.400.7 DEFINITIONS:
Creditable coverage: Health insurance that includes any of the following: a group health plan, such as one obtained through an employer or a spouse's employer; health insurance coverage, including individual

coverage; medicare and medicaid; CHAMPUS/tricare; a medical program of the Indian Health Service Act or of a tribal organization; a public health plan; and a health benefit plan under section 5(e) of the Peace Corps Act. It also includes: any hospital or medical service policy or insurance issuer, which includes, but is not limited to, comprehensive non-group, small group and large group policies, basic hospital expense policies, basic medical-surgical expense policies, and major medical expense policies.

[8.235.400.7 NMAC - N, 6/1/07]

8.235.400.16 SPECIAL RECIPIENT REQUIREMENTS: For family planning medicaid, a woman may not have current creditable health insurance coverage from another source, including medicare.

[2/1/95; 8.235.400.16 NMAC - Rn, 8 NMAC 4.PSO.420, 7/1/03; A, 6/1/07]

8.235.400.17 AGE: To be eligible for ~~[this category]~~ pregnancy related medicaid, specific age requirements are not a factor. To be eligible for family planning medicaid a woman must be between the ages of 19 and 44 years.

[2/1/95; 8.235.400.17 NMAC - Rn, 8 NMAC 4.PSO.421, 7/1/03; A, 6/1/07]

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

This is an amendment to 14.9.5 NMAC, Section 14, effective 6-06-07. In addition, 14 NMAC 9.5, "Medical Gas Installation and Certification" (filed 05/15/2000) was also renumbered and reformatted to 14.9.5 NMAC, "Medical Gas Installation and Certification" in accordance with current NMAC requirements, effective 6-06-07.

14.9.5.14 APPLICABLE CODES:

A. All construction industries division systems shall be installed in compliance with Chapter 13 of the *1997 uniform plumbing code* and *NFPA 99-C, the 1996 edition*, or the current adopted editions of these codes containing medical gas installation, inspection/verification, and the like, standards; provided, however, that a dental office, as defined in Section 3.3.801 of the NFPA 99-C, 2002 edition, in which nitrous oxide will be administered without a halogenated agent shall comply with the NFPA's level three piped gas and vacuum systems standard for waste anesthetic gas disposal systems.

B. If the code standards

differ in any regard, the more restrictive provision shall apply.

[6-30-00; 14.9.5.14 NMAC - Rn & A, 14 NMAC 9.5.14, 6-06-07]

End of Adopted Rules Section

Other Material Related to Administrative Law

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

NOTICE OF PUBLIC HEARING

The Children, Youth and Families Department, Family Services, Child Care Services Bureau will hold a formal public hearing on Wednesday, June 20, 2007, from 10:00 a.m. to 12:00 p.m. in Apodaca Hall on the 2nd floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico to receive public comments regarding proposed updates to the Child Care and Development Fund State Plan.

The draft CCDF State Plan may be obtained at www.newmexicokids.org or by contacting Adrian Martinez at 505-827-7499. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on June 20, 2007. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Adrian Martinez, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-7361.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact the Child Care Services Bureau at 505-827-7499. CCSB requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND REVISIONS TO THE NEW MEXICO STATE IMPLEMENTATION PLAN

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on August 7, 2007 at 9:00 a.m. in Room 317 of the New Mexico State Capitol Bldg, 490 Old Santa Fe Trail, Santa Fe 87501. The purpose of the hearing is to consider the matter of EIB 07-02(R), revisions to the New Mexico State Implementation Plan (SIP) Upon promul-

gation of a new National Ambient Air Quality Standard (NAAQS), the Clean Air Act section 110(a)(2)(D)(i) requires states to submit a SIP revision to address interstate transport of emissions that would affect nonattainment and maintenance areas in neighboring states, or interfere with measures adopted by other states under certain other provisions of the Act.

The proponent of this SIP revision is the New Mexico Environment Department ("NMED").

In consultation with the U.S. Environmental Protection Agency, Region 6 (EPA), the New Mexico Environment Department has produced the SIP revision, which does the following:

- * Demonstrates adequate provisions to prevent emissions from New Mexico from interfering with attainment or maintenance of the NAAQS in another state;
- * Shows that New Mexico does not interfere with another state's program to prevent significant deterioration of its air quality; and
- * Discusses New Mexico's influence on visibility.

The proposed SIP revision may be reviewed during regular business hours at the NMED Air Quality Bureau office, 2044 Galisteo, Santa Fe, New Mexico or by contacting Mary Hilbert at (505) 955-8032 or mary.hilbert@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section 72-2-6 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) summarize or include a copy of the direct testimony of each technical witness

and state the anticipated duration of the testimony of that witness;

(4) list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and

(5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on July 23, 2007, and should reference the docket number, EIB 07-02 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

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

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

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by July 23, 2007 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

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

**NEW MEXICO LIVESTOCK
BOARD**

NEW MEXICO LIVESTOCK BOARD

**NOTICE OF REGULAR BOARD
MEETING**

NOTICE IS HEREBY GIVEN that a regular board meeting will be held on Thursday, June 14, 2007, at the Ruidoso Convention Center, 111 Sierra Blanca Drive, Ruidoso, New Mexico, at 9:00 a.m. The Board will discuss matters of general business.

Copies of the agenda can be obtained by contacting Daniel Manzanares, Executive Director, New Mexico Livestock Board, 300 San Mateo Blvd NE, Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2007

Volume XVIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 16
Issue Number 2	January 17	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
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
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
Issue Number 18	September 17	September 28
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
Issue Number 24	December 17	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.