

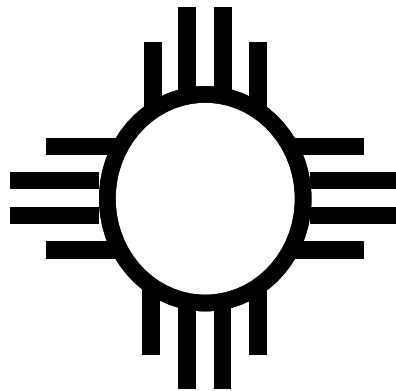
**NEW
MEXICO
REGISTER**



Volume XVIII
Issue Number 23
December 14, 2007

New Mexico Register

**Volume XVIII, Issue Number 23
December 14, 2007**



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 23

December 14, 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.

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Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.34.4 NMAC "Licensing Requirements For Producers, Production Facilities and Distribution" and re-hearing 7.34.2 and 7.34.3. The Hearing will be held on January 14, 2008 at 9:00 a.m. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to establish rules for a regulated system of medical use cannabis by issuing identification cards for participating individuals, developing a distribution system by licensure of medical use cannabis producers and production facilities and the designation of a medical use marijuana advisory board.

A copy of the proposed regulation can be obtained from:

Brian Royer
2040 S. Pacheco, Room 401 B
Santa Fe, NM 87505
(505) 476-9095

Please submit any written comments regarding the proposed regulation to:

Brian Royer
2040 S. Pacheco, Room 401 B
Santa Fe, NM 87505
(505) 476-9095

The Department will accept public comment through the close of the hearing.

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact Brian Royer by telephone at (505) 476-9095. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**Department of Health, INTERNAL
DRAFT LICENSURE PRODUCTION
RULE.**

**TITLE 7 HEALTH
CHAPTER 34 MEDICAL USE OF
MARIJUANA
PART 4 LICENSING
REQUIREMENTS FOR PRODUCERS,
PRODUCTION FACILITIES AND DIS-
TRIBUTION**

7.34.4.1 ISSUING AGENCY:

New Mexico Department of Health, Division of Health Improvement, Health Facility Licensing and Certification Bureau. [7.34.4.1 NMAC - N, __/__/2007]

**7.34.4.2 S T A T U T O R Y
AUTHORITY:** These requirements set forth herein are promulgated by the secretary of the department of health, pursuant to the general authority granted under Section 9-7-6 (E), NMSA 1978, as amended and the authority granted under Section 24-1-2 (D), 24-1-3 (I) and 24-1.5, NMSA 1978, of the Public Health Act as amended and the Lynn and Erin Compassionate Use Act, Sections 26-2B—1 et. seq., NMSA (2007). While federal law currently contains a broad prohibition of marijuana use, it also offers broad immunity from civil or criminal liability under the Controlled Substances Act for any duly authorized officer of any State who is lawfully engaged in the enforcement of any law relating to controlled substances. These rules define the duties of those engaged in the production and distribution of marijuana for medical use to enforce the Public Health Act and ensure proper enforcement of any criminal laws for behavior that has been deemed unlawful by the State of New Mexico. For purposes of Section 885(d) of the federal Controlled Substances Act, duly licensed producers and distributors are deemed duly authorized officers of the State of New Mexico.

[7.34.4.2 NMAC - N, __/__/2007]

7.34.4.3 SCOPE: This rule applies to all individuals or associations of individual qualified patients, designated caregivers and licensed producers of marijuana. These rules address the department's actions in the prevention of abuse or misuse of the Lynn and Erin Compassionate Use Act, Sections 26-2B—1 et. seq., NMSA (2007) and its purpose. All requirements contained herein are necessary prerequisites to the State's ability to distinguish between authorized use under this Act and unauthorized use under the State's criminal laws.

[7.34.4.3 NMAC - N, __/__/2007]

7.34.4.4 D U R A T I O N :
Permanent.

[7.34.4.4 NMAC - N, __/__/2007]

7.34.4.5 EFFECTIVE DATE:
_____, 2007

[7.34.4.5 NMAC - N, __/__/2007]

7.34.4.6 OBJECTIVE: These rules establish effective security controls and procedures for ensuring the safe production, distribution and dispensing of mar-

ijuana in a regulated system which prevents diversion and accessibility for potential abusers.

[7.34.4.6 NMAC - N, __/__/2007]

7.34.4.7 DEFINITIONS:

“Act” means the Lynn and Erin Compassionate Use Act, Sections 26-2B—1 et. seq., NMSA (2007).

“Adequate supply” means an amount of marijuana, in any form approved by the department, possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's designated caregiver that is determined by the department to be no more than reasonably necessary to ensure the uninterrupted availability of marijuana for a period of three (3) months which is derived solely from an intrastate source. An adequate supply shall not exceed six (6) ounces of useable marijuana, four (4) mature plants and twelve (12) seedlings or a three (3) month supply of topical treatment.

“Administrative review committee” means an intra-department committee selected for the purposes of reviewing application denial, licensed producer denial; or the imposition of an adverse action. The administrative review committee shall consist of the medical director, medical cannabis program coordinator, social worker, registered nurse, and attorney all of whom are licensed in the state of New Mexico and are in good standing.

“Administrative withdrawal” means the procedures for the voluntary withdrawal of a qualified patient or designated caregiver from the medical cannabis program.

“Adverse action” includes the denial of any application; immediate revocation of the qualified patient's or designated caregiver's registry identification card, licensed producer revocation, referral to state or local law enforcement, and loss of any lawful privileges under the act.

“Applicant” means any person applying to participate in the medical cannabis program as a qualified patient, designated caregiver, or licensed producer.

“American society for testing materials standard D3935” means the American society for testing materials classification standards for transparent polycarbonate bullet-resistant materials.

“Amended license” means a license issued by the department to reflect a non-substantive change, which does not result in the voiding of the original license.

“Annual license” means a license issued for a one (1) year period to a licensed producer for the exclusive purpose of the production, possession, distribution

or dispensing of marijuana

"Best practices" means the methods, procedures, models or systems that produce consistent cost effective cultivation practices for the production of medical use marijuana which have been validated in replicated randomized control studies published or reported in reputable scholarly sources.

"Cannabis" means the various forms of leaves and flowers of the hemp plant cannabis of any species.

"Controlled access area" means an enclosure of the service counter area that involves all conduct of routine business transactions with transparent polycarbonate or other bullet-resistant material that meets American society for testing materials or underwriter's laboratory standards.

"Debilitating medical condition" means:

- (1) cancer;
- (2) glaucoma;
- (3) multiple sclerosis;
- (4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;
- (5) epilepsy;
- (6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;
- (7) admitted into hospice care in accordance with rules promulgated by the department; or
- (8) any other medical condition, medical treatment or disease as approved by the department; and
- (9) which results in pain, suffering or debility for which there is credible evidence that medical use marijuana could be of benefit.

"Deficiency" means a violation of or failure to comply with a provision of these requirements.

"Department" means the department of health.

"Depository or time lock safe" means a B or higher rated safe box equipped with an electronic or manually programmed time lock, or drop slot that prevents unauthorized access.

"Designated caregiver" means an individual, currently residing in New Mexico, who is at least eighteen (18) years of age and who has been designated by the patient's practitioner or qualified patient as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the use of marijuana pursuant to the provisions of the act.

"Designated caregiver application form (MCP-62007-003)" means the registry identification card application form provided by the medical cannabis program.

"Distribution" means a system for the delivery of marijuana approved and licensed by the department. The following

criteria must be part of any licensed distribution system

(1) Secure grounds located within New Mexico and operated by licensed producers.

(2) Distribution to qualified patients or their designated caregivers at locations that are designated by the department and that are not within 300 feet of any school, church or daycare center.

"Division" means the public health division of the department of health.

"Documentation" means the written record of information supporting the facts related to the services being provided to the qualified patient or designated caregiver.

"Employee" means any person employed by a licensed producer.

"Facility" means any building licensed for the production, possession and distribution of marijuana in any form, which employs two (2) or more full or part time employees.

"Informal administrative review" means an informal non-adversarial administrative review of written documentation submitted by an applicant who has been denied status as a qualified patient, a qualified designated caregiver, or has been denied a production and distribution license.

"Intrastate" means existing or occurring within the state boundaries of New Mexico.

"License" means the document issued by the department pursuant to this rule and the Lynn and Erin Compassionate Use Act granting the legal right to produce, possess, dispense and distribute marijuana for a specified period of time not to exceed one (1) year.

"Licensure" means the process by which the department grants permission to an applicant to engage in the exclusive right to produce or possess, distribute and dispense marijuana.

"Licensed producer" means any person or association of persons licensed by the department within the state of New Mexico that the department determines to be qualified to produce, possess, distribute or dispense marijuana.

"Marijuana" means all parts of the plant cannabis, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Mature plant" means a harvestable female marijuana plant that is flowering.

"Medical cannabis program" means the administrative body of the New Mexico public health division charged with the implementation and management of the Act, to include issuance of registry identification cards, licensing of producers and distribution systems, administration of public hearings and administration of informal administrative reviews.

"Medical director" means a medical practitioner designated by the department to determine whether the medical condition of an applicant qualifies as a debilitating medical condition eligible for enrollment in the program.

"Medical provider certification for patient eligibility form (MCP-62007-002)" means a written certification form provided by the medical cannabis program signed by a patient's practitioner that, in the practitioner's professional opinion, the patient has a debilitating medical condition as defined by this rule and would be anticipated to benefit from the use of marijuana.

"Minor" means an individual less than eighteen (18) years of age.

"Paraphernalia" means any equipment, product, or material of any kind that is primarily intended or designed for use in compounding, converting, processing, preparing, inhaling, or otherwise introducing into the human body marijuana, including but not limited to: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, or punctured metal bowls; water pipes, roach clips: meaning objects used to hold burning material such as a marijuana cigarette, that has become too small or too short to be held in the hand; bongs; ice pipes or chillers; and devices intended for the vaporization of marijuana.

"Participant enrollment form (MCP-62007-001)" means the registry identification card application form for adult qualified patient applicants provided by the medical cannabis program.

"Pass-through window" means a manually operated mechanical pass-through trough, front-loading deposit door, or other similar device that is encased in a transparent polycarbonate window or other bullet-resistant material that meets American society for testing materials standard D3935, or underwriters laboratory standard 752.

"Personnel record" means an individual personnel employment file of any employee of a licensed producer containing, but not limited to the employee's education, work history, criminal history screen, training, licensure, certification, performance evaluation, salary, job title and description.

“Policy” means a written statement of principles that guide and determine present and future decisions and actions of the licensed producer.

“Possession” means full account of medical use marijuana under the qualified patient, designated caregiver or licensed producer’s direct inventory and control.

“Practitioner” means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act, Sections 30-31-1 et seq., NMSA (1978).

“Premises” means all buildings and grounds for which the licensed producer owns or leases as a facility for the production distribution, or possession of marijuana.

“Production” means the manufacture, planting, cultivation, or harvesting of marijuana.

“Uninterrupted availability of marijuana” means an adequate supply of useable marijuana, in any form approved by the department, which is possessed by a qualified patient or collectively possessed by each qualified patient and the qualified patient’s designated caregiver that includes but shall not exceed six (6) ounces of useable marijuana, four (4) mature plants, twelve (12) seedlings or a three (3) month supply of topical treatment.

“Usable marijuana” means the dried leaves and flowers of the female marijuana plant, or any mixture or preparation thereof whether smoked, vaporized, ingested or used to produce topical treatments, but does not include the seedlings, seeds, stalks, and roots of the plant.

“Qualified patient” means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of this rule.

“Qualified minor parental consent form (MCP-62007-004)” means the supplemental registry identification card application form for qualified minor’s parent or representative provided by the medical cannabis program.

“Reasonably necessary” means the amount of marijuana in any form approved by the department used by a qualified patient for the purpose of alleviating symptoms caused by a debilitating medical condition or associated medical treatments.

“Registry identification card” means a document issued by the department which identifies a qualified patient authorized to engage in the use of marijuana for a debilitating medical condition or a document issued by the department which identifies a designated caregiver authorized to engage in the intrastate possession and

administration of medical use marijuana for the sole use of the qualified patient.

“Representative” means an individual designated as the qualified patient’s agent, guardian, surrogate, or other legally appointed or authorized health care decision maker pursuant to the Uniform Health Care Decisions Act, §§ 24-7A-1 et seq. NMSA 1978.

“Routine business transactions” means any transaction conducted in the ordinary course of business.

“Secretary” means the secretary of the New Mexico department of health.

“Security alarm system” means any device or series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to notify law enforcement or a private security agency of an unlawful act in progress.

“Security policy” means the instruction manual or pamphlet adopted or developed by the licensed producer containing security policies, safety and security procedures, and personal safety and crime prevention techniques.

“Security surveillance system” means a VHS or digital camera surveillance system that is capable of recording and retrieving a clear video or digital recorded image.

“Service counter” means, at a minimum, the counter space designated by the licensed producer to include the controlled access area of the facility and the surrounding perimeter.

“Seedling” means a male or female marijuana plant that is not flowering.

“Topical treatments” means a transcutaneous therapeutic marijuana extract formulation comprising of water, short carbon chains alcohol, dimethylsulfoxide, polyethylene glycol, polypropylene glycol, glycerin, mineral oil and mixtures thereof.

“Underwriters laboratories 752 rated” means the underwriter’s laboratory standards for transparent polycarbonate bullet-resistant materials.

[7.34.4.7 NMAC - N, __/__/2007]

7.34.4.8 LICENSED PRODUCER APPLICATION REQUIREMENTS:

A. A licensed producer may be:

- (1) a qualified patient
- (2) a caregiver
- (3) an association of persons.
- (4) a private entity that operates a facility on secure grounds; or
- (5) a state owned and/or operated facility.

B. Application for license.

(1) The medical cannabis program shall only license production of marijuana for the number of qualified patients currently registered with the program.

(2) No license shall be issued without first verifying the qualified patients to be served by the applicant, and the total quantity of marijuana to be produced and distributed is determined. The licensing authority may verify information on each application and accompanying documentation, including:

(a) contacting the applicant by telephone or by mail;

(b) if proof of identity is uncertain the department may require a face-to-face meeting and may require the production of additional identification materials;

(3) The submittal of an application form is in no way a guarantee the application will be accepted, or that the licensing authority will issue a license. Information provided by the applicant and used by the licensing authority for the licensing process shall be accurate and truthful. Applicants may be asked to produce additional information related to the production, possession, distribution or dispensing of marijuana. Any applicant that fails to participate in good faith by refusing to produce requested information or falsifying information presented in the licensing process shall have its application denied by the licensing authority.

(4) All applications shall include a system for establishing that the qualified patients or designated caregivers served by the applicant continue to be eligible to participate in the marijuana program.

(5) Prior to commencing the application process, the applicants shall submit the following to the licensing authority:

C. Qualified patients.

(1) Application form and appropriate non-refundable fees.

(2) A description of all buildings and grounds that the qualified patient owns or leases and will be used in the production of marijuana.

(3) The device or series of devices that will be used to provide security. The security surveillance system shall at a minimum provide a written description of the qualified patient’s security policies, safety and security procedures, personal safety and crime prevention techniques.

D. Designated caregiver.

(1) Application form and appropriate non-refundable fees.

(2) A description of all buildings and grounds that the designated caregiver owns or leases and will be used in the production of marijuana.

(3) The device or series of devices that will be used to provide security. The security surveillance system shall at a minimum provide a written description of the designated caregiver's security policies, safety and security procedures, personal safety and crime prevention techniques.

E. Association of persons:

(1) Application form and appropriate non-refundable fees.

(2) A description of the association's legal structure and governance structure.

(3) Copies of the entity's articles of incorporation, if applicable, and by-laws or if the applicant is not incorporated, all other organizational documents including specific administrative roles and responsibilities. Each initial application shall include the following information:

(a) all persons or business entities having direct or indirect authority over the management or policies of the facility;

(b) all persons or business entities having five percent ownership in the facility, whether direct or indirect and whether the interest is in profits, land or facility, including owners of any business entity which owns all or part of the land or facility; and

(c) the identities of all creditors holding a security interest in the facility.

(4) A description of all buildings and grounds that the association owns or leases and will be used in the production of marijuana.

(5) The device or series of devices that will be used to provide security. The security surveillance system shall at a minimum provide a written description of the association's security policies, safety and security procedures, personal safety and crime prevention techniques.

(6) The applicant's policies and procedures for the production and distribution of marijuana to the qualified patients served by the private entity, including applicant's plan for monitoring and reporting all production, possession and storage, distribution, or disbursement.

(7) The applicant, as the person identified as being responsible for the production, possession, distribution and dispensing of marijuana, is required to consent to a nationwide and statewide criminal history screening check. All employees of the applicant shall consent to a nationwide and statewide criminal history screening check. An applicant or employee of an applicant who have been convicted of a disqualifying felony will be permanently prohibited from licensure or employment by a licensed producer. The applicant or employee of the applicant will be notified by registered mail of his or her disqualification.

(8) The applicant shall provide

the licensing authority, for each person or entity disclosed in (3) Subsection (a), (b), and (c) of this Section, information regarding criminal convictions, civil actions alleging fraud, embezzlement or misappropriation of property and all state or federal adverse action resulting in suspension or revocation of any permit or business, or professional license

F. Private entity.

(1) The application and appropriate non-refundable fees.

(2) A description of the association's legal structure and governance structure.

(3) Copies of the entity's articles of incorporation, if applicable, and by-laws or if the applicant is not incorporated, all other organizational documents including specific administrative roles and responsibilities. Each initial application shall include the following information:

(a) all persons or business entities having direct or indirect authority over the management or policies of the facility;

(b) all persons or business entities having five percent ownership in the facility, whether direct or indirect and whether the interest is in profits, land or facility, including owners of any business entity which owns all or part of the land or facility; and

(c) the identities of all creditors holding a security interest in the facility.

(4) A description of all buildings and grounds that the private entity owns or leases and will be used in the production of marijuana.

(5) The device or series of devices that will be used to provide security, the security surveillance system, the written description of the private entity's security policies, safety and security procedures, personal safety and crime prevention techniques as detailed in Section 7.34.4.11 of this rule.

(6) The applicant's policies and procedures for the production and distribution of marijuana to the qualified patients served by the private entity, including applicant's plan for monitoring and reporting all production, possession and storage, distribution, or disbursement as detailed in Section 7.34.4.10 of this rule.

(7) Floor plans

(8) Fire authority approval.

(9) The applicant, as the person identified as being responsible for the production, possession, distribution and dispensing of marijuana, is required to consent to a nationwide and statewide criminal history screening check. All employees of the applicant shall consent to a nationwide and statewide criminal history screening check. An applicant or employee of an applicant who has been convicted of a disqualifying felony will be permanently prohibited from

licensure or employment by a licensed producer. The applicant or employee of the applicant will be notified by registered mail of his or her disqualification.

(10) The applicant shall provide the licensing authority, for each person or entity disclosed in (3) Subsection (a), (b), and (c) of this Section, information regarding criminal convictions, civil actions alleging fraud, embezzlement or misappropriation of property and all state or federal adverse action resulting in suspension or revocation of any permit or business, or professional license.

G. For a state owned and / or operated system:

(1) The application and appropriate non-refundable fees.

(2) A description of the association's legal structure and governance structure.

(3) Copies of the entity's articles of incorporation, if applicable, and by-laws or if the applicant is not incorporated, all other organizational documents including specific administrative roles and responsibilities. Each initial application shall include the following information:

(a) all persons or business entities having direct or indirect authority over the management or policies of the facility;

(b) all persons or business entities having five percent ownership in the facility, whether direct or indirect and whether the interest is in profits, land or facility, including owners of any business entity which owns all or part of the land or facility; and

(c) the identities of all creditors holding a security interest in the facility.

(4) A description of all buildings and grounds that the private entity owns or leases and will be used in the production of marijuana.

(5) The device or series of devices that will be used to provide security, the security surveillance system, the written description of the private entity's security policies, safety and security procedures, personal safety and crime prevention techniques as detailed in Section 7.34.4.11 of this rule.

(6) The applicant's policies and procedures for the production and distribution of marijuana to the qualified patients served by the private entity, including applicant's plan for monitoring and reporting all production, possession and storage, distribution, or disbursement as detailed in Section 7.34.4.10 of this rule.

(7) Floor plans

(8) Fire authority approval.

(9) The applicant, as the person identified as being responsible for the production, possession, distribution and dispensing of marijuana, is required to consent to a nationwide and statewide criminal his-

tory screening check. All employees of the applicant shall consent to a nationwide and statewide criminal history screening check. An applicant or employee of an applicant who has been convicted of a disqualifying felony will be permanently prohibited from licensure or employment by a licensed producer. The applicant or employee of the applicant will be notified by registered mail of his or her disqualification.

(10) The applicant shall provide the licensing authority, for each person or entity disclosed in (3) Subsection (a), (b), and (c) of this Section, information regarding criminal convictions, civil actions alleging fraud, embezzlement or misappropriation of property and all state or federal adverse action resulting in suspension or revocation of any permit or business, or professional license.

H. Annual license. An annual license is issued for a one (1) year period to a licensed producer that has met all requirements of this rule.

I. Amended license. A licensed producer shall submit an application form provided by the licensing authority for an amended license, with a non-refundable required fee to the licensing authority prior to change of qualified patients served by the licensed producer, change of location of the facility, ownership, facility name, capacity or any physical modification or addition to the facility.

(1) An application for change of the licensed producer shall be submitted within ten (10) business days prior to the change.

(2) An application for an increase in production, possession, distribution or dispensing shall be accompanied by a floor plan. A licensed producer shall not increase production, possession, distribution or dispensing until the licensing authority has approved the increase and issued the appropriate license. At no time shall the licensing authority issue production licenses for more than the registered number of qualified patients currently registered with the department.

J. Application for renewal of an annual license. Each licensed producer shall apply for renewal of the annual license thirty (30) calendar days prior to expiration by submitting to the licensing authority:

(1) an application for renewal of license and all nonrefundable fees;

(2) an amended program narrative, if the licensed producer has changed its program or focus of its services;

(3) current fire inspection report; and

(4) the number of qualified patient or designated caregivers being served.

K. Non-transferable registration of license.

(1) A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and returned to the licensing authority when any one of the following situations occurs without first obtaining an amended license, if appropriate:

(a) ownership of the facility changes;

(b) change in location

(c) operations are discontinued

(d) the removal of all marijuana from the facility by lawful state authority.

(2) Transactions, which do not constitute a change of ownership, include the following:

(a) when applicable, changes in the membership of a corporate board of directors or board of trustees;

(b) two (2) or more corporations merge and the originally licensed corporation survives;

(3) Management agreements are generally not changes in ownership if the licensed producer continues to retain ultimate authority for the operation. However, if the ultimate authority is surrendered and transferred from the licensed producer to a new manager, then a change of ownership has occurred.

L. Automatic expiration of license.

(1) A license shall expire at midnight on the day indicated on the license as the expiration date, unless renewed at an earlier date, suspended, revoked or:

(a) on the day a licensed producer changes location, if no amended license has been issued;

(b) on the day the licensed producer discontinues operation; or

(c) upon request of an administrative withdrawal by the licensed producer

(2) A licensed producer that intends to voluntarily close shall notify the licensing authority no later than thirty (30) calendar days prior to closure. All licensed producers shall notify all qualified patients or designated caregivers prior to expiration of the license. Any unused marijuana must be turned over to local law enforcement.

M. Display of license. The licensed producer shall display the license in a conspicuous public place that is visible to residents, employees, and visitors. [7.34.4.8 NMAC - N, __/__/2007]

7.34.4.9 MONITORING AND CORRECTIVE ACTIONS:

A. Monitoring

(1) The department may perform on-site monitoring of a licensed producer to determine compliance with these rules. The department may review any and all employ-

ee, qualified patient or designated caregiver records or conduct interviews with employees, qualified patient or designated caregivers, or licensed producers for the purpose of determining compliance with these requirements.

(2) All licensed producers shall provide the department immediate access to any material and information necessary for determining compliance with these requirements.

(3) Failure by the licensed producer to provide the department access to the premises or information may result in the imposition of sanctions or revocation of its license, including referral to state law enforcement.

(4) Any adverse findings by the department cited during monitoring described in these requirements may result in sanction(s), including suspension, revocation, refusal to renew or denial of licensure in accordance with all the rules governing such actions, and, if necessary, referral to state or local law enforcement.

(5) The department shall refer criminal complaints against a licensed producer to the appropriate New Mexico state or local authorities.

B. Corrective action plan.

(1) If violations of these requirements are cited, the licensed producer shall be provided with an official written report of the findings within one (1) business day following the monitoring visit.

(2) Unless an earlier date is required by the department, the licensed producer shall submit a written plan of correction within five (5) calendar days of receipt of the official written report citing the violations.

(3) The plan of correction shall set forth with respect to each deficiency:

(a) the specific corrective actions to be taken;

(b) the signature of the licensed producer responsible for ensuring implementation of the corrective action plan.

C. License is a Privilege. Any license granted under the provisions of the Lynn and Erin Compassionate Use Act and these rules is a privilege and not a right. In accordance with the Public Health Act, Section 24-1-5 (H) NMSA 1978, if immediate action is required to protect the health and safety of the general public, the qualified patient or designated caregivers, the department may suspend the licensed producer's operational license immediately.

D. Grounds for revocation or suspension of license, denial of initial or renewal application for license. A license may be denied, revoked, or suspended for :

(1) failure to comply with any

provisions of these requirements;

(2) failure to permit monitoring by authorized representatives of the department;

(3) permitting any licensed producer or employee thereof to be involved in direct qualified patient or designated caregiver care while impaired by the use of prescribed drugs;

(4) permitting any licensed producer or employee thereof to be impaired by the use of non-prescribed drugs, including alcohol;

(5) the discovery of repeated violations of these requirements;

(6) the failure to provide the required care and services as required by the Lynn and Erin Compassionate Use Act, this rule, and any contract or license issued pursuant to this rule;

(7) presence of, or a history of, license revocation, suspension, non-renewal, or denial.

E. Informal dispute resolution. A licensed producer or applicant subject to an adverse action may request an informal review by the administrative review committee. The decision of the departmental administrative review committee is final and not subject to appeal. [7.34.4.9 NMAC - N, __/__/2007]

7.34.4.10 LICENSED PRODUCER'S POLICIES AND PROCEDURES: All licensed producers shall develop, implement and maintain on the premises, a description of the production, possession, distribution and methods of dispensing marijuana pursuant to the requirements of this Section.

A. Distribution criteria documentation. The licensed producer shall develop, implement and maintain on the premises, policies and procedures relating to the marijuana program description and shall at a minimum include the following criteria:

(1) Develop distribution criteria for qualified patients and designated caregivers appropriate for marijuana services. Qualified patient's or designated caregiver's distribution criteria shall include:

(a) written documentation of the qualified patient's debilitating medical condition;

(b) clear identifiable photocopy of all qualified patient's or designated caregiver's registry identification cards.

B. Alcohol and drug free work place policy. A licensed producer, with two or more employees, shall develop, implement and maintain on the premises, policies and procedures establishing an alcohol and drug free workplace program. At a minimum these written policies and procedures shall include:

(1) random unannounced individ-

ual or facility wide blood or urine laboratory testing;

(2) process for collection of samples to ensure that blood or urine collected from employee is unadulterated.

C. Facility policies and procedures. The licensed producer, with two or more employees, shall develop, implement and maintain on the premises, facility policies and procedures to address the following requirements:

(1) A job description or employment contract developed for all employees, which includes duties, authorities, responsibilities, qualifications, and supervision. Qualifications for all professional and non-professional disciplines shall be documented in the personnel records to include evidence of professional education, certification, or licensing.

(2) Training in and adherence to confidentiality policies.

D. Personnel record. The licensed producer shall maintain a personnel record for each employee which includes:

(1) an application for employment and a record of any disciplinary action taken;

(2) wage and salary information, time records, authorization and record of leave;

(3) a personnel record that verifies that each employee meets the respective employment requirements for the position held, including annual verification of basic skills and annual written evaluation of performance;

(4) documentation of all required criminal screening.

E. Employee training. The licensed producer, with two or more employees, shall develop, implement and maintain on the premises on-site training curriculum, or enter into contractual relationships with outside resources capable of meeting employee training needs, which includes, but not limited to the following topics.

(1) Professional conduct and ethics and patient confidentiality.

(2) Informational developments in the field of marijuana use.

(3) Debilitating medical conditions.

(4) Qualified patient rights.

(5) Employee safety and security training. The licensed producer shall provide each employee, at the time of his or her initial appointment, and by periodic review not to exceed four (4) month intervals, crime prevention and safety training in accordance with a department approved written training curriculum. The training curriculum may include computer-based training. Periodic reviews shall include, at a minimum, review of the written training

curriculum and site-specific issues. Training shall be conducted in a language that is understood by the employee. The licensed producer or designee shall conduct training, or designate a knowledgeable representative to conduct training, in accordance with the written training curriculum that includes but is not limited to:

(a) proper use of security measures and controls that have been adopted

(b) specific procedural instructions on how to respond to an emergency, including a robbery or violent accident.

(6) All licensed producers shall prepare training documentation for each employee and have employees sign a statement indicating the date, time, place they received their training and topics discussed, to include name and title of presenters. The licensed producer shall maintain documentation of an employee's training for a period of at least six (6) months after termination of an employee's employment. Employee training documentation shall be made available within twenty-four (24) hours of a department representative's request. The twenty-four (24) hour period shall exclude holidays and weekends. Failure to provide employee training documentation within the twenty-four (24) hour period shall subject the licensed producer to the sanctions and penalties provided for in this rule. Training curricula shall be kept on the licensed producer's premises and made available upon request by the department. [7.34.4.10 NMAC - N, __/__/2007]

7.34.4.11 LICENSED PRODUCER REQUIREMENTS FOR STATE OR PRIVATE ENTITIES. All licensed producers of marijuana who are state or private entities shall comply with the following requirements.

A. Security surveillance system:

(1) The licensed producer shall provide each location with a fully operational VHS or digital security surveillance system that, at a minimum, shall:

(a) record a continuous unobstructed view of the all entry and exit areas; and

(b) include a high resolution black and white or color screen monitor with on screen date and time capabilities.

(2) The licensed producer or designee shall:

(a) conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the security surveillance system, and, in the event of an extended mechanical malfunction that exceeds an eight hour period, provide alternative security that may include closure of the premises;

(b) maintain documentation, for a period of at least twenty-four months, of all

inspections, servicing, alterations, and upgrades performed on the security surveillance system. All documentation shall be made available within forty-eight hours of a department representative's request; and

(c) maintain a VHS or digital library of all in-facility transactions recorded by the security surveillance system during normal operating hours of the facility for a period of no less than twenty (20) business days.

(3) Failure to provide equipment maintenance documentation within the forty-eight (48) hour period shall subject the licensed producer to the sanctions and penalties provided for in this rule. The twenty-four (24) hour period shall not include holidays and weekends.

B. Security alarm system.

(1) The licensed producer shall provide and maintain in each facility a fully operational security alarm system with a working personal panic alarm for each employee that, when activated, notifies law enforcement or a private security agency when an unlawful act is in progress.

(2) The licensed producer or designee shall:

(a) conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the alarm system, and, in the event of an extended mechanical malfunction that exceeds an eight (8) hour period, provide alternative security that may include closure of the premises; and

(b) maintain documentation for a period of at least twenty-four months of all inspections, servicing, alterations, and upgrades performed on the security alarm system; all documentation shall be made available within twenty-four (24) hours of a department representative's request. Failure to provide equipment maintenance documentation within the forty-eight hour period shall subject the licensed producer to the sanctions and penalties provided for in this rule. The twenty-four (24) hour period shall not include holidays and weekends.

(3) The security alarm activators shall be located in a location accessible to the employees and be available to the employees as a portable device that can be carried on their person.

C. Controlled access area. The licensed producer shall provide a controlled access area by means of a secured safety enclosure of transparent polycarbonate or other bullet-resistant material that meets the American society for testing materials standard D3935 or underwriter's laboratory standard 752, for the purposes of restricting all entries onto the premises and for conducting all qualified patient, designated caregiver or routine

business transactions. The licensed producer shall provide a pass-through window of transparent polycarbonate or other bullet-resistant material that meets American society for testing materials standard D3935 or underwriter's laboratory standard 752 that restricts access to and encompasses the service counter area, providing an enclosure that extends not less than five feet above the service counter.

D. Depository or time lock safe. The licensed producer shall:

(a) provide at least one B or higher rated depository or time lock safe in each facility;

(b) utilize each depository or time lock safe to ensure controlled access to cash;

(c) conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the depository or time lock safe system, or, in the event of an extended mechanical malfunction that exceeds an eight (8) hour period, provide alternative security that may include closure of the premises; and

(d) maintain documentation, for a period of at least twenty-four (24) months, of all inspections, servicing, alterations, and upgrades performed on the depository or time lock safe. All documentation shall be made available within twenty-four (24) hours of a department representative's request. Failure to provide equipment maintenance documentation within the twenty-four (24) hour period shall subject the licensed producer to the sanctions and penalties provided for in this rule. The twenty-four (24) hour period shall not include holidays and weekends.

E. Late night security measures. All licensed producers shall be equipped and maintain exterior lighting during all evening and nighttime hours that ensures clear visibility of the parking areas, walkways, building entrances and exits. In addition to the other security requirements of this rule, all facility's operating between the hours of 6:00 p.m. and 6:00 a.m. shall employ at least one of the following security measures.

(1) Two (2) Employee Shift. The licensed producer shall employ a minimum of two (2) employees during the operating hours of 6:00 p.m. to 6:00 a.m.; or, shall substitute the second employee requirement by employing security personnel on the premises.

(2) Alternative Operation: between the hours of 6:00 p.m. and 6:00 a.m., the licensed producer shall close the marijuana production facility and prohibit all sales transactions but allow employees to perform duties such as facility maintenance, cleaning and other non-production duties. Signs shall be conspicuously posted on all

entryways stating the facility is closed.

7.34.4.12 EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES FOR THE MEDICAL USE OF MARIJUANA:

A. No qualified patient, qualified caregiver, licensed producer or employee of the licensed producer shall be subject to arrest, prosecution or penalty, in any manner for the production, possession, distribution or dispensing of marijuana pursuant to this rule and act if the quantity possessed does not exceed the approved licensed adequate supply.

B. Any property interest that is possessed, owned or used in connection with the production of marijuana, or acts incidental to such production shall not be harmed, neglected, injured or destroyed while in the possession of state or local law enforcement officials. Any such property interest shall not be forfeited under any state or local law providing for the forfeiture of property except as provided in the Forfeiture Act. Marijuana, paraphernalia or other property seized from a qualified patient or designated caregiver in connection with the claimed use of marijuana shall be returned immediately upon the determination by a court or prosecutor that the qualified patient or designated caregiver is entitled to the protections of the provisions of this rule and act, as may be evidenced by a failure to actively investigate the case, a decision not to prosecute, the dismissal of charges or acquittal.

[7.34.4.12 NMAC - N, __/__/2007]

7.34.4.13 PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON THE PRODUCTION OF MEDICAL USE MARIJUANA AND CRIMINAL PENALTIES:

A. The licensing authority shall only issue licenses for the production and distribution of marijuana for the number of currently registered qualified patients.

B. Participation in a marijuana licensing program by a licensed producer or the employees of a licensed producer does not relieve the producer or employee from:

(1) criminal prosecution or civil penalties for activities not authorized in this rule and act;

(2) liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of marijuana; or

(3) criminal prosecution or civil penalty if a licensed producer or employee thereof possesses, sells, distributes, dispenses or transfers marijuana or uses marijuana;

(a) in a school bus or public vehicle,

(b) on school grounds or property;

(c) in the workplace of the qualified patient's or designated caregiver's employment, or

(d) at a public park, recreation center, youth center or other public place.

(4) federal criminal prosecution or civil penalty for possession, distribution, diversion or transfers of marijuana or use of marijuana otherwise authorized in this rule and act.

C. Fraudulent misrepresentation. Any person who makes a fraudulent representation to a law enforcement officer about the person's participation in a medical cannabis program to avoid arrest or prosecution for a marijuana-related offense is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 et seq., NMSA 1978.

D. Unlawful distribution. If a licensed producer or employee of a licensed producer sells, distributes, dispenses or transfers marijuana to a person not approved by the department pursuant to this rule and act or obtains or transports marijuana outside New Mexico in violation of federal law, the licensed producer or employee of the licensed producer shall be subject to arrest, prosecution and civil or criminal penalties pursuant to state law.

E. Revocation of registry identification card, licensed designated caregiver card, license to produce or license to distribute. Violation of any provision of this rule will result in the immediate revocation of the qualified patient's or designated caregiver's registry identification card, or the license to produce or distribute as applicable.

[7.34.4.13 NMAC - N, ___/___/2007]

7.34.4.14 LICENSED PRODUCER CONFIDENTIALITY: The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a registry identification card, or have applied for or been licensed as a producer. Individual names on the list shall be confidential and not subject to disclosure, except:

A. to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of this rule and act;

B. to authorized employees of state or local law enforcement agencies, but only for the purpose of verifying that a person is lawfully in possession of the license to produce; or

C. as provided in the federal Health Insurance Portability and

Accountability Act of 1996.
[7.34.4.14 NMAC - N, ___/___/2007]

7.34.3.15 SEVERABILITY. If any part or application of these rules is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of these rules legally severed shall not interfere with the remaining protections provided by these rules and the act.

[7.34.4.15 NMAC - N, ___/___/2007]

HISTORY OF 7.34.4 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 a.m., on January 15, 2008, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing will be Working Disabled Individuals Medicaid.

The New Mexico Human Services Department is proposing to change language in the WDI rules that specify the maximum income limit used in Test 1 and Test 2 at less than 250% of the Federal Poverty Level (FPL). Currently the Income Standard allows income up to and including 250% which is incorrect. The maximum countable income must fall under 250% of FPL. HSD's eligibility system correctly determines the maximum income.

Interested persons may submit written comments no later than 5:00 p.m., January 15, 2008, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

Copies of the Human Services Register are available for review on our Website at

www.state.nm.us/hsd/register.html . or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO BOARD OF PHARMACY

NEW MEXICO BOARD OF PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **January 14th & 15th, 2008** at 9:00 a.m. in the **Board of Pharmacy Conference Room located at 5200 Oakland Ave., NE, Albuquerque, NM** for the purpose of conducting a regular Board meeting.

Interested persons may contact Debra Wilhite, Administrative Secretary, 5200 Oakland Ave., NE, Suite A, Albuquerque, NM 87113, (505) 222-9830 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us to receive copies of the agenda, which will be available January 2, 2008. The Board may go into executive session at any time to discuss licensee and/or personnel matters. Anyone who needs special accommodations for the meeting should contact the Board office at (505) 222-9830 as soon as possible.

The agenda (tentative) will be available starting January 2, 2008, through the Board's website: www.rld.state.nm.us/pharmacy.

The Board will notice the following for rule hearings:

16.19.6.13 NMAC - Conspicuous Display Requirements

The Board will address:

Approval of Applications:

Other Board Matters:

Public Requests:

*Executive Director's Report:
Case presentations*

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF AN INQUIRY INTO)
 INTERCONNECTION STANDARDS FOR)
 ELECTRIC UTILITIES,)
)
 and)
)
**IN THE MATTER OF A RULEMAKING)
 RELATING TO INTERCONNECTION)
 STANDARDS FOR ELECTRIC UTILITIES)
 AND THE REPEAL OF RULES)
 PROMULGATED PURSUANT TO THE)
 ELECTRIC UTILITY INDUSTRY)
 RESTRUCTURING ACT OF 1999.)****

Case No. 07-00014-UT

Case No. 07-00422-UT

NOTICE OF PROPOSED RULEMAKING

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon the Status Report (“Status Report”) issued by Hearing Examiner William J. Herrmann on February October 17, 2007, and upon its own motion.

THE COMMISSION FINDS AND CONCLUDES:

1. On January 16, 2007, the Commission issued, on its own motion, its Notice of Inquiry (“Notice”) in Case No. 07-00014-UT, requesting public input and comment on standards for interconnection by electric utilities with customer-owned generation facilities. In that Notice, the Commission announced that it would consider detailed interconnection standards for electric utilities under its authority for the purpose of promulgating such reasonable rules and regulations as may be necessary to protect users of electricity from damage to their person or property. The Notice further established dates for a workshop on interconnection standards, designated William Herrmann as Hearing Examiner to preside over the workshop, to take all actions necessary and convenient thereto within the limits of his authority, and to schedule additional workshops as he deemed necessary.

2. Pursuant to the Notice, the Hearing Examiner presided over numerous workshops (approximately 12) during the period March 20, 2007 and concluding on September 20, 2007. As the result of those workshops, which were attended by numerous parties, the Hearing Examiner recommends in the Status Report that the Commission initiate a rulemaking proceeding to adopt two new rules, that Part 570 of Title 17, Chapter 9 NMAC (“Rule 570”) be repealed and replaced with a substantially modified Part 570, and repeal existing Part 571 of Title 17, Chapter 9 NMAC (“Rule 571”).

3. The first of the two new rules recommended by the Status Report, which would be codified as Part 568 of Title 17, Chapter 9 NMAC (“Proposed Rule 568”), would establish interconnection standards and procedures for generating facilities with a rated capacity of up to and including 10 megawatts (“MW”). Proposed Rule 568 would also include the New Mexico Interconnection Manual and exhibits (collectively, “the Manual”), which would be appended to Proposed Rule 568 and be included as part of the Commission’s regulations. The second of the two new rules, to be codified as Part 569, of Title 17, Chapter 9 NMAC (“Proposed Rule 569”) would be used for interconnections to a utility’s distribution system for generators greater than 10 MW. The revisions to Rule 570 are being proposed because the interconnection standards and procedures currently set forth in Rules 570 and 571 would be incorporated into Proposed Rules 568 and 569, and because the remaining provisions of Rules 570 and 571 would be combined into Rule 570. Proposed Rules 568 and 569, Rule 570, as amended, are attached to the Status Report.

4. The Hearing Examiner’s proposed rules should be issued by the Commission as proposed rules, and are attached as NOPR Exhibit 1 to this Notice of Proposed Rulemaking.

5. In addition, the Commission, on its own motion, is proposing to repeal Parts 591 (“Rule 591”) and 594 (“Rule 594”) of Title 17, Chapter 9 NMAC. Rule 591 set forth certain requirements related to the provision of standard offer service for residential or

small commercial customers who had not chose a competitive power supplier after customer choice under the Electric Utility Industry Restructuring Act of 1999 (“Restructuring Act”), NMSA 1978 Section 62-3A-1, *et seq.*, became effective. Rule 594 established a code of conduct applicable to New Mexico public utilities when an affiliate became authorized to offer retail competitive service pursuant to the Restructuring Act. However, the Legislature, effective June 20, 2003, repealed the Restructuring Act in its entirety. *See* Laws 2003, ch. 336, Section 9. Because the repeal of the Restructuring Act renders Rules 591 and 594 unnecessary and without purpose, the Commission is proposing to repeal those two rules. The proposed repeal of Rule 591 and 594 is attached as NOPR Exhibit 2 to this Notice of Proposed Rulemaking.

6. The Commission is proposing the foregoing rules pursuant to the authority vested in this Commission by the New Mexico Public Regulation Commission Act, NMSA 1978, Section 8-8-1 *et seq.*, the Public Utility Act, NMSA 1978, Section 62-3-1 *et seq.*

7. The Commission will accept written comments on the rules proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written comments on the proposed rule no later than December 21, 2007. Any response comments shall be filed no later than January 7, 2008. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. Any proposed changes to the proposed rule shall be submitted in hard copy. All pleadings, including comments and suggested changes to the proposed rule, shall bear the caption and docket number contained at the top of this Notice.

8. Written comments or written response comments shall be sent to:

New Mexico Public Regulation Commission
 Records Division
Attention: Case No. 07-00422-UT
 224 East Palace Avenue, Marian Hall
 Santa Fe, NM 87501
 Telephone: (505) 827-6968

9. Copies of the proposed rule may be downloaded from the

Commission's web site, www.nmprc.state.nm.us, under "Meetings," then "Public Notices."

10. The Commission will review all timely submitted written comments and will hold a public comment hearing on the following date and at the following time and place:

February 1, 2008
9:00 a.m.
PERA Building
4th Floor Hearing Room
1120 Paseo De Peralta
Santa Fe, NM 87501

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

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

13. Commission Rule 1.2.3.7(B) ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be March 3, 2008. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

14. Copies of this Notice of Proposed Rulemaking should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. Case No. 07-00422-UT is created and commenced for the purpose of developing a rule relating to energy efficiency and load management programs.

B. The proposed rules, attached to this Notice of Proposed Rulemaking as NOPR Exhibits 1 and 2, are proposed for adoption as a permanent rule as provided by this Notice of Proposed Rulemaking.

C. Initial and reply comments on the proposed rules must be filed as provided in this Notice of Proposed Rulemaking.

D. The record in this case, for purposes of 17.2.3.7(B) NMAC ("Ex Parte Communications") shall be closed at 5:00 p.m. on March 3, 2008.

E. Public comment hearings shall be held as provided in this Notice of Proposed Rulemaking.

F. A copy of this Notice of Proposed Rulemaking, including NOPR Exhibits 1 and 2, shall be mailed to all persons listed on the attached Certificate of Service. This Notice of Proposed Rulemaking, excluding NOPR Exhibits 1 and 2, shall be published in two newspapers of general circulation in the State and in the New Mexico Register. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rules on the Commission's web site.

G. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, on November 20, 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON MARKS, VICE CHAIRMAN

DAVID W. KING, COMMISSIONER

CAROL K. SLOAN, COMMISSIONER

SANDY JONES, COMMISSIONER

**NEW MEXICO
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 on proposed rules updating the New Mexico Electrical and Electrical Safety Codes, making certain green building standards minimum code requirements, and making technical corrections respecting grammar, formatting and internal consistency, will be held on **MONDAY JANUARY 14, 2008, FROM 9:00 A.M. TO 12:00 NOON**, at the following locations:

* **SANTA FE, NM** - CID Conference Room, 2550 Cerrillos Road, 3rd Floor, Santa Fe

* **ALBUQUERQUE, NM** - New Mexico Gaming Board Conference Room, 4900 Alameda Blvd. NE, Albuquerque

* **LAS CRUCES, NM** - CID Conference Room, 505 S. Main, Suite 150, Las Cruces

* **FARMINGTON, NM** - Civic Center, Room A, 200 W. Arrington, Farmington

* **ROSWELL, NM** - City Council Chambers, 425 North Richardson, Roswell

The proposed changes will affect the following rules:

1. Repeal of the 2005 New Mexico Electrical Code, 14.10.4 NMAC

2. Repeal of the 2005 New Mexico Electrical Safety Code, 14.10.5 NMAC

3. Adoption of the 2008 New Mexico Electrical Code

4. Adoption of the 2008 New Mexico Electrical Safety Code

5. Adoption of the 2006 New Mexico Solar Energy Code

6. Amendments to the following rules:

* 14.7.2 NMAC - 2006 New Mexico Commercial Building Code

* 14.7.3 NMAC - 2006 New Mexico Residential Building Code

* 14.7.6 NMAC - 2006 New Mexico Energy Conservation

Code
* 14.8.2 NMAC -
2006 New Mexico Plumbing Code
* 14.9.2 NMAC -
2006 New Mexico Mechanical Code

Copies of the draft rules will be available at the Construction Industries Division Offices beginning January 2, 2008.

You are invited to attend and express your opinion on these proposed rules changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., January 14, 2008.

If you require special accommodations to attend the hearing, please notify the Division by phone, email or fax, of such needs no later than January 2, 2008. Telephone: 505-476-4700. Email: www.rld@state.nm.us/cid

**End of Notices and
Proposed Rules Section**

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Adopted Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

**TITLE 20 ENVIRONMENTAL
PROTECTION**
**CHAPTER 11 ALBUQUERQUE-
BERNALILLO COUNTY AIR QUALITY
CONTROL BOARD**
**PART 48 GREENHOUSE GAS
EMISSIONS REPORTING**

20.11.48.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2738.
[20.11.48.1 NMAC - N, 1/1/08]

20.11.48.2 SCOPE: 20.11.48 NMAC applies to each person who owns or operates a source of greenhouse gas emissions within Bernalillo county and who meets the applicability requirements of 20.11.48 NMAC. 20.11.48 NMAC does not apply to sources in Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.
[20.11.48.2 NMAC - N, 1/1/08]

20.11.48.3 STATUTORY AUTHORITY: 20.11.48 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque ROA 1994 Section 9-5-1-4.
[20.11.48.3 NMAC - N, 1/1/08]

20.11.48.4 DURATION: Permanent.
[20.11.48.4 NMAC - N, 1/1/08]

20.11.48.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section.
[20.11.48.5 NMAC - N, 1/1/08]

20.11.48.6 OBJECTIVE: The objective of 20.11.48 NMAC is to establish requirements for the annual reporting of greenhouse gas emissions to the department using tools and procedures similar to the tools and procedures used by greenhouse gas emissions registries.
[20.11.48.6 NMAC - N, 1/1/08]

20.11.48.7 DEFINITIONS: In addition to the definitions in 20.11.48 NMAC, the definitions in 20.11.1 NMAC shall apply unless there is a conflict between definitions, in which case the definition in 20.11.48 NMAC shall govern.

A. "Air contaminant" means a substance, including any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay or reaction product thereof, including greenhouse gas as defined in 20.11.48.7 NMAC.

B. "Air pollution" means the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property.

C. "California climate action registry" means the voluntary registry established pursuant to California Health and Safety Code D. 26, Pt. 4, Ch. 6, as amended.

D. "Carbon dioxide equivalent" means a quantity of a given greenhouse gas multiplied by a conversion factor provided in the emissions reporting tool and procedures under Subsection B of 20.11.48.202 NMAC.

E. "Direct emissions" means emissions from sources at the facility.

F. "Emission report" or "emissions inventory" means a listing, by source, of the amount of greenhouse gas emissions discharged into the atmosphere.

G. "Equity share" means the extent of economic interest held in a facility, which is typically the same as ownership percentage.

H. "Facility" means any building, structure, facility, or installation that emits or may emit any greenhouse gas.

I. "Greenhouse gas" means any of the following: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons or sulfur hexafluoride.

J. "Indirect emissions" means emissions that are a consequence of the operation under the control of the person filing a report, but which occur at a source owned or controlled by another entity.

K. "Metric ton" means 2204.62 pounds.

L. "Operational control" means having the authority to introduce and

implement operating policies at the facility or operation.

M. "Reporting year" means the calendar year in which emissions required to be reported under 20.11.48 NMAC occurred.

N. "The climate registry" means the nonprofit corporation entitled "the climate registry" that is incorporated pursuant to the District of Columbia nonprofit corporation act for the purpose of creating and operating a multi-state greenhouse gas emissions registry.
[20.11.48.7 NMAC - N, 1/1/08]

20.11.48.8 VARIANCES: No person can obtain a variance from the requirements of 20.11.48 NMAC.
[20.11.48.8 NMAC - N, 1/1/08]

20.11.48.9 SEVERABILITY: If for any reason any section, subsection, sentence, phrase, clause or wording of 20.11.48 NMAC is held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of remaining portions of 20.11.48 NMAC.
[20.11.48.9 NMAC - N, 1/1/08]

20.11.48.10 CONSTRUCTION: 20.11.48 NMAC shall be liberally construed to carry out its purpose.
[20.11.48.10 NMAC - N, 1/1/08]

20.11.48.11 SAVINGS CLAUSE: The filing of 20.11.48 NMAC, *Greenhouse Gas Emissions Reporting*, and the filing of any amendment to 20.11.48 NMAC with the state records center and archives shall not affect any action pending for violation of a city or county ordinance, a board regulation, or a permit, and shall not affect a petition filed pursuant to 20.11.48 NMAC. Prosecution for violation of a prior statute, ordinance, part or permit shall be governed and prosecuted under the statute, ordinance, part or permit wording in effect at the time the violation was committed.
[20.11.48.11 NMAC - N, 1/1/08]

20.11.48.12 COMPLIANCE WITH OTHER REGULATIONS: Compliance with 20.11.48 NMAC does not relieve a person from responsibility for complying with any other applicable federal, state, or local regulations.
[20.11.48.12 NMAC - N, 1/1/08]

20.11.48.13 DOCUMENTS: Documents incorporated and cited in 20.11.48 NMAC may be viewed at the Albuquerque environmental health department, Suite 3023, One Civic Plaza, 400

Marquette NW, Albuquerque, NM.
[20.11.48.13 NMAC - N, 1/1/08]

20.11.48.14 to 20.11.48.199
[RESERVED]

20.11.48.200 APPLICABILITY

A. The owner or operator of the following facilities shall report greenhouse gas emissions to the department:

(1) a facility at which the sum of the nameplate capacity of all electrical generating units is equal to or greater than 25 megawatts of electricity;

(2) a petroleum refining facility with a North American industry classification system code 32411; and

(3) a cement manufacturing facility with a North American industry classification system code 32731. Calendar year 2008 shall be the first year the owner or operator of the facilities shall compile greenhouse gas emissions data.

B. Owners or operators that are not required by 20.11.48 NMAC or another board regulation to report greenhouse gas emissions may report voluntarily.

C. Owners or operators required by 20.11.48 NMAC to report greenhouse gas emissions may as an alternative register and verify their greenhouse gas emissions with the climate registry or the California climate action registry. Compliance with Subsection C of 20.11.48.200 NMAC shall constitute compliance with greenhouse gas emissions reporting for the greenhouse gas emissions reporting year if:

(1) the greenhouse gas emissions report complies with all other requirements of 20.11.48 NMAC; and

(2) the owner or operator has provided the department with access to the information required by 20.11.48 NMAC.
[20.11.48.200 NMAC - N, 1/1/08]

20.11.48.201 GREENHOUSE GAS EMISSIONS REPORTING REQUIREMENTS

A. Requirements for the first reporting year. By July 1, 2009, the owner or operator shall submit to the department a greenhouse gas emissions report regarding greenhouse gas emissions during calendar year 2008 or provide the department with access to the required data. The 2009 first report for calendar year 2008 shall include all direct emissions of carbon dioxide from the facility, except direct emissions from motor and nonroad vehicles. For the first reporting year, the owner or operator shall not be required to report any greenhouse gas emissions in addition to direct emissions of carbon dioxide.

B. Requirements for the second reporting year. By July 1, 2010, the owner or operator shall submit to the

department a greenhouse gas emissions report regarding greenhouse gas emissions during calendar year 2009 or provide the department with access to the required data. The 2010 second report shall include:

(1) all direct emissions of carbon dioxide from the facility except direct emissions from motor vehicles and nonroad vehicles;

(2) indirect greenhouse gas emissions from all electricity, steam, and heat purchased for and consumed at the facility; and

(3) all other reasonable emissions information required by the department in writing.

C. Requirements for the third reporting year and each year thereafter. By July 1, 2011, and by July 1 of each year thereafter, the owner or operator shall submit to the department a greenhouse gas emissions report or provide the department with access to the required data regarding greenhouse gas emissions during the immediately-preceding year. The owner or operator shall report:

(1) all direct emissions of greenhouse gases from the facility, except direct emissions from motor vehicles and nonroad vehicles;

(2) indirect greenhouse gas emissions from all electricity, steam, and heat purchased for and consumed at the facility; and

(3) all other reasonable emissions information required by the department in writing.
[20.11.48.201 NMAC - N, 1/1/08]

20.11.48.202 GREENHOUSE GAS EMISSIONS REPORTING PROCEDURES

A. Owners or operators that meet the applicability requirements in Section 20.11.48.200 NMAC shall submit annual greenhouse gas emissions reports as required by 20.11.48 NMAC. Each greenhouse gas emissions report shall include a full 12-month calendar year.

B. Except as provided under Subsection C of 20.11.48.200 NMAC, reporting shall be conducted using the greenhouse gas emissions reporting tool and procedures provided by the department. The reporting tool and procedures shall:

(1) be made available by the department to the public for review and comment at least 60 days before the beginning of a greenhouse gas emission reporting year; except the first reporting year, the department shall make the reporting tools and procedures available to the public for review and comment at least 30 days before the beginning of the first reporting year; department notifications of the availability of the tool and procedures for review may be made electronically or in writing;

(2) as determined by the department, be consistent with emissions quantification methods and best practices accepted by the climate registry or the California climate action registry;

(3) include references to recommended methods for estimating greenhouse gas emissions from equipment and processes regarding which emissions calculations are required;

(4) include conversion factors for each greenhouse gas into carbon dioxide equivalent;

(5) include the process for the source to submit and obtain approval for alternate methods for estimating greenhouse gases;

(6) include alternate methods for estimating greenhouse gases, if alternate methods are available;

(7) provide for simplified and limited documentation of emissions that collectively account for five percent or less of total facility emissions, expressed as carbon dioxide equivalent;

(8) require the owner or operator to include in each annual report a certification signed by the owner or operator attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official; the certification shall include the full name, title, signature, date of signature, and telephone number of the certifying official; and

(9) include provisions to report:

(a) the name and address of the reporting owner or operator;

(b) the name and telephone number of the person to contact regarding the emissions report;

(c) emissions from facilities within the jurisdiction of the air quality control board;

(d) if reported, emissions from facilities located on Indian lands and the name of the Indian nation, tribe or pueblo;

(e) if reported, emissions from facilities located in another state or territory of the United States, and the name of the state or territory;

(f) if reported, emissions from facilities located in another country and the name of the country;

(g) fuel use directly related to reported emissions, including amounts and specifications for each fuel type;

(h) how the department can determine the methods utilized to make emissions calculations, if different than the methods incorporated in the tool;

(i) calculations for emissions of each reported greenhouse gas and the method for totaling all reported greenhouse gases; emissions data shall be provided in units of metric tons of carbon dioxide equivalent, including emissions that occur

during regular operation, maintenance, start-ups, shutdowns, upsets, and malfunctions; and

(j) a listing of the owners of equity shares of the emissions reported and the respective percentages of ownership.

C. If approved in writing by the department, the owner or operator may deliver to the department simplified and limited documentation of emissions that collectively account for five percent or less of total facility emissions, expressed as carbon dioxide equivalent.

D. The owner or operator shall include in each annual report a certification signed by the owner or operator attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official; the certification shall include the full name, title, signature, date of signature, and telephone number of the certifying official.

[20.11.48.202 NMAC - N, 1/1/08]

HISTORY OF 20.11.48 NMAC:
[Reserved]

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 11 ALBUQUERQUE-
BERNALILLO COUNTY AIR QUALITY
CONTROL BOARD
PART 104 EMISSION STANDARDS
FOR NEW MOTOR VEHICLES**

20.11.104.1 ISSUING AGENCY:
Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2738.
[20.11.104.1 NMAC - N, 1/1/08]

20.11.104.2 SCOPE: 20.11.104 NMAC applies to all persons who deliver for sale, offer for sale, sell, import, deliver, purchase, offer for rent, offer for lease, acquire, receive or register new passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty motor vehicles within the jurisdiction of the Albuquerque-Bernalillo county air quality control board.

[20.11.104.2 NMAC - N, 1/1/08]

**20.11.104.3 STATUTORY
AUTHORITY:** The New Mexico Air Quality Control Act, NMSA 1978 Sections

74-2-4 and 74-2-5(B); the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3, 4 and 5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3, 9-5-1-4, and 9-5-1-5.

[20.11.104.3 NMAC - N, 1/1/08]

20.11.104.4 DURATION:
Permanent.

[20.11.104.4 NMAC - N, 1/1/08]

20.11.104.5 EFFECTIVE DATE:
1/1/08 unless a later date is cited at the end of a section

[20.11.104.5 NMAC - N, 1/1/08]

20.11.104.6 OBJECTIVE: The objective of 20.11.104 NMAC is to establish emission standards for new motor vehicles subject to 20.11.104 NMAC.

[20.11.104.6 NMAC - N, 1/1/08]

20.11.104.7 DEFINITIONS: In addition to the terms defined in 20.11.104.7 NMAC, *Definitions*, the definitions in California code of regulations ("CCR"), Title 13, sections of which are incorporated by reference in 20.11.104 NMAC, and the definitions in 20.11.1 NMAC apply, except that "California" shall mean "Bernalillo county" unless otherwise specified or clearly inappropriate. If there is a conflict between a term defined in 20.11.104.7 NMAC, and CCR, Title 13, Section 1900, or 20.11.1 NMAC, the definition in 20.11.104.7 NMAC shall apply.

A. "Air contaminant emission control system" means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine or a system or engine modification on a motor vehicle which causes a reduction of air contaminants emitted from the motor vehicle engine, including but not limited to exhaust control systems, fuel evaporative control systems and crankcase ventilating systems.

B. "Business" means an occupation, profession or trade; a person or partnership or corporation engaged in commerce, manufacturing, or a service; or a profit-seeking enterprise or concern.

C. "CARB" means California air resources board.

D. "CCR" means California code of regulations, Title 13.

E. "California-certified" means a vehicle having a valid executive order stating that the vehicle meets all applicable requirements of the applicable sections of CCR and is approved for sale in California by CARB.

F. "California standards" means the emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which California has received a waiver from the United States environmental protection agency (EPA) pursuant to 42 U.S.C. Section 7543 and which other states are authorized to adopt pursuant to 42 U.S.C. Section 7507.

G. "Certification" means a finding by CARB that a motor vehicle, motor vehicle engine, or air contaminant emission control system satisfies the criteria adopted by CARB for the control of specified air contaminants from motor vehicles.

H. "Clean Air Act" or "CAA" means the federal Clean Air Act, 42 U.S.C. Sections 7401 et seq.

I. "Dealer" means any person actively engaged in the business of offering to sell, solicit or advertise the sale, purchase, transfer, lease, sale or exchange of a new motor vehicle and who has an established place of business.

J. "Department" means the Albuquerque environmental health department.

K. "Emergency vehicle" means any publicly-owned vehicle operated by a peace officer in the performance of his duties, any authorized emergency vehicle used for fighting fires or responding to emergency fire calls, any publicly-owned authorized emergency vehicle used by an emergency medical technician or paramedic, or any ambulance used by a private entity under contract with a public agency.

L. "Emission standards" means specified limitations on the discharge of air contaminants into the atmosphere.

M. "Executive order" means a document issued by CARB certifying that a specified test group or model year vehicle has met all applicable requirements adopted by CARB pursuant to the applicable sections of CCR for the control of specified air contaminants from motor vehicles.

N. "Fleet average greenhouse gas emission requirement" means the limitations on greenhouse gas exhaust mass emission values from passenger cars, light-duty trucks and medium-duty passenger vehicles as set forth in CCR, Section 1961.1.

O. "Fleet-wide average non-methane organic gas exhaust emission requirement" means, based on the calculation in CCR, Section 1960.1(g)(2), a motor vehicle manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles subject to this regulation and sold in Bernalillo county in any model year.

P. "Gross vehicle weight rating" means the value specified by the

manufacturer as the maximum loaded weight of a single vehicle.

Q. "Light-duty truck" means any model year 2000 and subsequent motor vehicle certified to the standards in CCR, section 1961(a)(1) rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle rated at 6,000 pounds or less, which is designed primarily for the purposes of transportation of property, is a derivative of such vehicles, or is available with special features enabling off-street or off-highway operation and use.

R. "Low-emission vehicle" or "**LEV**" means a motor vehicle which has been certified by CARB.

S. "Medium-duty passenger vehicle" or "**MDPV**" means any medium-duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The medium-duty passenger vehicle definition does not include any vehicle which:

(1) is an "incomplete truck", i.e., a truck that does not have primary load-carrying device or container attached;

(2) has a seating capacity of more than 12 persons;

(3) is designed for more than nine persons in seating rearward of the drivers seat; or

(4) is equipped with an open cargo area of 72.0 inches in interior length or more; a covered box not readily accessible from the passenger compartment shall be considered an open cargo area for the purpose of this definition.

T. "Medium-duty vehicle" means any pre-1995 model year heavy-duty vehicle with a manufacturer's gross vehicle weight rating of 8,500 pounds or less, any 1992 through 2006 model year heavy-duty low-emission, ultra-low emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in CCR, Section 1960.1(h)(2) having a manufacturer's gross vehicle weight rating of 14,000 pounds or less; and any 2000 and subsequent model heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in CCR, Sections 1961(a)(1) or 1962 having a manufacturer's gross weight rating between 8,501 and 14,000 pounds.

U. "Model year" means the manufacturer's annual production period which includes January 1, or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

V. "Motor vehicle" or "**vehicle**" means every device in, upon, or by which a person or property is or may be

transported otherwise than by muscular power, except motorized bicycles and devices that run only on rails or tracks.

W. "Motor vehicle engine" means an engine that is used to propel a motor vehicle.

X. "New vehicle" means any vehicle with 7,500 miles or fewer on its odometer.

Y. "Non-methane organic gas" or "**NMOG**" means the sum of non-oxygenated and oxygenated hydrocarbons contained in a gas sample as measured in accordance with the "California non-methane organic gas test procedures", which is incorporated herein by reference.

Z. "Passenger car" means any motor vehicle designed primarily for transportation of persons and having a design capacity equal to or less than 12 individuals;

AA. "Person" means an individual, public or private corporation, company, partnership, firm, association, society or joint stock company, municipality, state, interstate body, the United States, or any board, commission, employee, agent, officer or political subdivision, or a state, an interstate body or the United States;

BB. "Placed in service" means having been sold to an ultimate purchaser and not to a dealer or other entity in the distribution chain, and having been individually registered for on-road use by the New Mexico Motor vehicle division.

CC. "Sale" or "**sell**" means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate purchaser.

DD. "State" means:

(1) for purposes of referring to a governing entity, the municipality of Albuquerque and the county of Bernalillo; or

(2) for purposes of referring to a geographic area, all geographic areas within the jurisdiction of the Albuquerque-Bernalillo county air quality control board.

EE. "Test group" means a grouping of vehicles as defined by 40 CFR 86.1827-01.

FF. "Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person whom in good faith purchases a new motor vehicle or new motor vehicle engine for a purpose other than resale.

GG. "Vehicle identification number" or "**VIN**" means a unique, 17 digit, alphanumeric code that the vehicle manufacturer assigns to a vehicle.

HH. "ZEV credit bank" means a system designated by the department that records and tracks the generation, verification, transfer, voluntary retirement, use, and invalidation of vehicle credits.

[20.11.104.7 NMAC - N, 1/1/08]

20.11.104.8 VARIANCES: No person can obtain a variance from the requirements of 20.11.104 NMAC. [20.11.104.8 NMAC - N, 1/1/08]

20.11.104.9 SEVERABILITY: If for any reason any section, subsection, sentence, phrase, clause or wording of 20.11.104 NMAC, or the application of the provision to any person or circumstance, is held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of the remaining portions of 20.11.104 NMAC. [20.11.104.9 NMAC - N, 1/1/08]

20.11.104.10 CONSTRUCTION: 20.11.104 NMAC shall be liberally construed to carry out its purpose. [20.11.104.10 NMAC - N, 1/1/08]

20.11.104.11 SAVINGS CLAUSE: The filing of 20.11.104 NMAC, *Emission Standards For New Motor Vehicles*, and the filing of any amendment to 20.11.104 NMAC with the state records center and archives shall not affect any action pending for violation of a city or county ordinance, a board regulation, or a permit. [20.11.104.11 NMAC - N, 1/1/08]

20.11.104.12 COMPLIANCE WITH OTHER REGULATIONS: Compliance with 20.11.104 NMAC does not relieve a person from responsibility for complying with any other applicable federal, state, or local regulations. [20.11.104.12 NMAC - N, 1/1/08]

20.11.104.13 LIMITATION OF DEFENSE: The existence of a valid registration under 20.11.104 NMAC shall not constitute a defense to a violation of any section of 20.11.104 NMAC, except the requirement for obtaining a registration. [20.11.104.13 NMAC - N, 1/1/08]

20.11.104.14 DOCUMENTS: Documents incorporated and cited in 20.11.104 NMAC may be viewed at the Albuquerque environmental health department, Suite 3023, One Civic Plaza, 400 Marquette NW, Albuquerque, New Mexico. [20.11.104.14 NMAC - N, 1/1/08]

20.11.104.15 to 20.11.104.99 [Reserved]

20.11.104.100 APPLICABILITY: Except as provided in 20.11.104.103 NMAC, *Exemptions*, no motor vehicle manufacturer, dealer, or other person shall deliver for sale, offer for sale, sell, import, deliver, purchase, offer for rent, offer for lease, acquire, receive, or register a new model year 2011 or subsequent model year passenger car, light-duty truck, medium-

duty passenger vehicle, or medium-duty vehicle unless the vehicle has been certified by CARB and received a CARB executive order.

[20.11.104.100 NMAC - N, 1/1/08]

20.11.104.101 REQUIREMENTS TO MEET CALIFORNIA STANDARDS:

A. Starting with model year 2011 and each model year thereafter, no motor vehicle manufacturer, dealer, or other person shall deliver for sale, offer for sale, sell, import, deliver, purchase, offer for rent, offer for lease, acquire, receive, or register new passenger car, light-duty truck, or medium-duty passenger vehicle, or medium-duty vehicle unless the vehicle is certified to the California standards.

B. Each motor vehicle manufacturer shall comply with the fleet average emission requirements and the warranty, recall, reporting, and other applicable requirements contained in 20.11.104 NMAC.

C. Each motor vehicle dealer shall comply with the department's inspection and information requests issued pursuant to 20.11.104.112, *Inspections and Information Requests*.

[20.11.104.101 NMAC - N, 1/1/08]

20.11.104.102 INCORPORATION BY REFERENCE:

A. For the purpose of applying the incorporated sections of CCR, "California" means the municipality of Albuquerque and the county of Bernalillo and "CARB" means Albuquerque-Bernalillo county air quality control board, unless otherwise specified or clearly inappropriate.

B. Each manufacturer of a new model year 2011 and subsequent model year passenger car, light-duty truck, medium-duty passenger vehicle, or medium-duty vehicle must comply with each applicable standard in the CCR as incorporated by reference in 20.11.104 NMAC. The department shall maintain copies of these sections for public inspection. The following sections of are incorporated in 20.11.104 NMAC:

(1) Section 1900: Definitions. CCR effective date 1/1/2006.

(2) Section 1956.8(g) and (h): Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy Duty Engines and Vehicles. CCR effective date 11/15/06.

(3) Section 1960.1: Exhaust Emission Standards and Test Procedures - 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles. CCR effective date 3/26/04.

(4) Section 1961: Exhaust Emission Standards and Test Procedures - 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. CCR effective date 2/17/2007.

(5) Section 1961.1: Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. CCR effective date 01/01/06.

(6) Section 1962: Zero-Emission Vehicle Standards for 2005 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. CCR effective date 3/26/04.

(7) Section 1962.1: Electric Vehicle Charging Requirements. CCR effective date 7/24/02.

(8) Section 1965: Emission Control and Smog Index Labels - 1979 and Subsequent Model Year Vehicles. CCR effective date 12/04/03.

(9) Section 1968.2: Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. CCR effective date 04/21/03.

(10) Section 1968.5: Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines. CCR effective date 04/21/03.

(11) Section 1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions. CCR effective date 2/17/07.

(12) Section 1978: Standards and Test Procedures for Vehicle Refueling Emissions. CCR effective date 2/17/07.

(13) Section 2035: Purpose, Applicability and Definitions. CCR effective date 12/26/90.

(14) Section 2037: Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles. CCR effective date 11/27/99.

(15) Section 2038: Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such. CCR effective date 11/27/99.

(16) Section 2039: Emission Control System Warranty Statement. CCR effective date 12/26/90.

(17) Section 2040: Vehicle Owner Obligations. CCR effective date

12/26/90.

(18) Section 2041: Mediation; Finding of Warrantable Condition. CCR effective date 12/26/90.

(19) Section 2046: Defective Catalyst. CCR effective date 2/15/79.

(20) Section 2109: New Vehicle Recall Provisions. CCR effective date 12/30/83.

(21) Section 2111: Applicability. CCR effective date 12/13/06.

(22) Section 2112: Definitions. CCR effective date 11/15/03.

(23) Section 2113: Initiation and Approval of Voluntary and Influenced Recalls. CCR effective date 1/26/95.

(24) Section 2114: Voluntary and Influenced Recall Plans. CCR effective date 11/27/99.

(25) Section 2115: Eligibility for Repair. CCR effective date 1/26/95.

(26) Section 2116: Repair Label. CCR effective date 1/26/95.

(27) Section 2117: Proof of Correction Certificate. CCR effective date 1/26/95.

(28) Section 2118: Notification. CCR effective date 1/26/95.

(29) Section 2119: Record keeping and Reporting Requirements. CCR effective date 11/27/99.

(30) Section 2120: Other Requirements Not Waived. CCR effective date 1/26/95.

(31) Section 2121: Penalties.

(32) Section 2122: General Provisions. CCR effective date 1/26/95.

(33) Section 2123: Initiation and Notification of Ordered Emission-Related Recalls. CCR effective date 1/26/95.

(34) Section 2124: Availability of Public Hearing. CCR effective date 1/26/95.

(35) Section 2125: Ordered Recall Plan. CCR effective date 1/26/95.

(36) Section 2126: Approval and Implementation of Recall Plan. CCR effective date 1/26/95.

(37) Section 2127: Notification of Owners. CCR effective date 1/26/95.

(38) Section 2128: Repair Label. CCR effective date 1/26/95.

(39) Section 2129: Proof of Correction Certificate. CCR effective date 1/26/95.

(40) Section 2130: Capture Rates and Alternative Measures. CCR effective date 11/27/99.

(41) Section 2131: Preliminary Tests. CCR effective date 1/26/95.

(42) Section 2132: Communication with Repair Personnel. CCR effective date 1/26/95.

(43) **Section 2133: Record keeping and Reporting Requirements.** CCR effective date 1/26/95.

(44) **Section 2135: Extension of Time.** CCR effective date 1/26/95.

(45) **Section 2137: Vehicle and Engine Selection.** CCR effective date 12/28/2000.

(46) **Section 2138: Restorative Maintenance.** CCR effective date 11/27/99.

(47) **Section 2139: Testing.** CCR effective date 8/21/2002.

(48) **Section 2140: Notification and Use of Test Results.** CCR effective date 8/21/2002.

(49) **Section 2141: General Provisions.** CCR effective date 12/28/00.

(50) **Section 2142: Alternative Procedures.** CCR effective date 2/23/90.

(51) **Section 2143: Failure Levels Triggering Recall.** CCR effective date 11/27/99.

(52) **Section 2144: Emission Warranty Information Report.** CCR effective date 11/27/99.

(53) **Section 2145: Field Information Report.** CCR effective date 11/27/99.

(54) **Section 2146: Emissions Information Report.** CCR effective date 11/27/99.

(55) **Section 2147: Demonstration of Compliance with Emission Standards.** CCR effective date 8/21/02

(56) **Section 2148: Evaluation of Need for Recall.** CCR effective date 11/27/99.

(57) **Section 2149: Notification of Subsequent Action.** CCR effective date 2/23/90

(58) **Section 2151: New Motor Vehicle Dealer Surveillance.** CCR effective date 12/13/83.

(59) **Section 2235: Requirements.** CCR effective date 9/17/91.
[20.11.104.102 NMAC - N, 1/1/08]

20.11.104.103 EXEMPTIONS: The following vehicles are not subject to 20.11.104 NMAC.

A. Military tactical vehicles.

B. Vehicles sold for registration and use in a state that is not subject to the California vehicle emission standards.

C. Previously registered vehicles with more than 7,500 miles, provided that for vehicle dealers, the mileage at the time of sale is determined by the odometer statement when the dealer acquired the vehicle.

D. Vehicles available only for rent to a final destination in a state that

is not subject to the California vehicle emission standards.

E. Vehicles transferred by inheritance or as a result of divorce, dissolution, or legal separation;

F. Emergency vehicles if a public safety agency has demonstrated to the department's satisfaction that a vehicle that meets the agency's needs is not otherwise reasonably available.

G. A vehicle acquired by a New Mexico resident to replace a vehicle registered to such resident that was stolen, damaged or failed beyond reasonable repair while out of state, provided that such replacement vehicle is acquired out of state when the previously-owned vehicle was stolen, damaged, or failed beyond reasonable repair.

H. A vehicle with a right-hand drive configuration that is not available in a California-certified model, purchased by a rural route postal carrier and used primarily for work.

I. Vehicles purchased by a nonresident before establishing residency in New Mexico, regardless of the mileage on the vehicle.
[20.11.104.103 NMAC - N, 1/1/08]

20.11.104.104 FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION REQUIREMENTS AND REPORTING:

A. Fleet average requirement. Effective model year 2011 and each model year thereafter, each motor vehicle manufacturer's NMOG fleet average emissions from passenger cars, light-duty trucks and medium-duty vehicles delivered for sale in Bernalillo county shall not exceed the Fleet Average NMOG Exhaust Emission Requirement set forth in CCR, Section 1961. Compliance shall be based on the number of vehicles that are subject to 20.11.104 NMAC and are delivered for sale in Bernalillo county.

B. Fleet average NMOG exhaust emission credits and debits. Effective model year 2011 and each model year thereafter, each motor vehicle manufacturer may accrue NMOG emission credits and debits and use credits in accordance with the procedures in CCR Section 1961. Debits and credits accrued and used shall be based on the number of vehicles subject to 20.11.104 NMAC that are delivered for sale in Bernalillo county.

C. Reporting. Effective model year 2011 and for each model year thereafter, each motor vehicle manufacturer shall submit a report to the department no later than March 1, that follows the procedures in CCR, Section 1961 and in the same format used to report such information to CARB.
[20.11.104.104 NMAC - N, 1/1/08]

20.11.104.105 ZEV SALES:

A. Effective model year 2011 and each model year thereafter, manufacturers subject to 20.11.104 NMAC shall produce and deliver for sale in Bernalillo county vehicles that comply with the ZEV sales requirement set forth in, Section 1962.

B. An intermediate volume or large volume manufacturer of ZEVs, ATPZEVs or PZEVs may use previously earned credits in accordance with CCR, Section 1962 to offset the ZEV sales requirement in Subsection A of 20.11.104.105 NMAC.
[20.11.104.105 NMAC - N, 1/1/08]

20.11.104.106 ZEV CREDIT BANK AND REPORTING:

A. Manufacturers shall establish a ZEV credit bank with the department on or before January 1, 2011, and establish reporting procedures to report additions and deletions to that bank in accordance with CARB manufacturers advisory correspondence (MAC) #06-03 zero emission vehicle (ZEV) credit reporting and tracking system and Subsections B, C, D, E and F of 20.11.104.106 NMAC.

B. The department shall set aside a number of New Mexico ZEV credits proportionally equivalent to the number of ZEV credits possessed by the requesting manufacturer for use in the state of California at the beginning of the 2011 model year. This transfer shall be performed only after all credit obligations for model years 2010 and earlier have been satisfied in California. Each manufacturer's California credit balances shall be multiplied by the ratio of the average number of PCs and LDT1s produced and delivered for sale in New Mexico to the combined average number of PCs and LDT1s produced and delivered for sale in California in model years 2003 through 2005, or, alternatively, by the ratio of PCs and LDT1s produced and delivered for sale in New Mexico to the combined number of PCs and LDT1s produced and delivered for sale in California in model year 2011. In either case, the time period used to determine the credit transfer ratio shall be used to determine model year 2011 ZEV sales requirements in New Mexico. The department shall establish ZEV compliance accounts for each manufacturer and allocate the credits calculated under this subsection to such compliance accounts, including separate accounts for PZEV, AT-PZEV, NEV, Type 0 ZEVs, Type I ZEVs, Type II ZEVs, Type III ZEVs, transportation system, and extended service. The department shall notify each manufacturer of the number of ZEV credits available for use by July 31, 2011. Credits issued pursuant to this subsection may only be used in New Mexico for compliance with the ZEV provisions subject to the same

requirements and limitations on credit use set forth in CCR, Section 1962, adjusted for New Mexico specific vehicle numbers. Each manufacturer operating in accordance with this subsection shall do the following.

(1) By May 1, 2011, provide the department with the total number of PC and LDT1 vehicles produced and delivered for sale in New Mexico and California for 2003 through 2005 model years.

(2) Alternatively, by May 1, 2011, provide the department with the total number of PC and LDT1 vehicles to be produced and delivered for sale in New Mexico and California in model year 2011. By March 1, 2012, provide the department with actual model year 2011 PC and LDT1 vehicles produced and delivered for sale in New Mexico and California. By May 31, 2012, the department shall adjust and notify each manufacturer of the number of ZEV credits established based on actual model year 2011.

(3) By May 1, 2011, provide the department with the total number of banked California credits after all model year 2010 and earlier obligations have been met.

C. In addition to the credits transferred in accordance with Subsection B of 20.11.104.106 NMAC, manufacturers may also generate and deposit credits for vehicles delivered for sale within Bernalillo county during the 2009 through 2010 model years, a manufacturer shall open an account with the ZEV credit bank and submit an appropriate notice of credit generation to the department by the time such vehicles are delivered.

D. A manufacturer shall be entitled to full credit for each type III ZEV placed in service prior to model year 2012 in any state that has adopted the California ZEV regulations contained in CCR, section 1962.

E. A manufacturer with an account in the ZEV credit bank may acquire credits from another manufacturer with an account in the ZEV credit bank, provided that if the credits are to be used for future compliance with the ZEV sales requirement in 20.11.104.105 NMAC, *ZEV Sales*, the transaction shall be recorded in the ZEV credit bank and certified by both parties to the transaction.

F. A vehicle equivalent credit shall not constitute or convey a property right.
[20.11.104.106 NMAC - N, 1/1/08]

20.11.104.107 FLEET AVERAGE GREENHOUSE GAS EXHAUST EMISSIONS AND REPORTING:

A. Effective model year 2011 and each model year thereafter, each manufacturer subject to 20.11.104 NMAC shall comply with emissions standards, fleet

average greenhouse gas exhaust mass emission requirements for passenger car, light-duty truck, medium-duty passenger vehicle weight classes, and other requirements of CCR Section 1961.1, for vehicles delivered for sale in Bernalillo county.

B. Requirements for large volume manufacturers. The fleet average greenhouse gas exhaust emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles delivered for sale within Bernalillo county by a large volume manufacturer for model year 2011 and each model year thereafter are set forth in CCR, Section 1961.1.

C. Requirements for small, intermediate, and independent manufacturers. The fleet average greenhouse gas exhaust emission requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles delivered for sale within Bernalillo county by small volume, intermediate volume and independent low volume manufacturers for model year 2016 and each model year thereafter are set forth in CCR, Section 1961.1.

D. Greenhouse gas emission credits and debits. Greenhouse gas credits and debits may be accrued and used based on each manufacturer's sale of vehicles within Bernalillo county as set forth in CCR, Section 1961.1.

E. Optional alternative compliance with greenhouse gas emission standards. Greenhouse gas vehicle test groups that are certified pursuant to CCR, Section 1961.1(a)(1)(B)2 in the state of California may obtain equivalent credit if delivered for sale and use within Bernalillo county.

F. Alternative compliance credit. To receive the credit authorized by subsection E of 20.11.104.107 NMAC, a manufacturer shall submit to the department the data set forth in CCR, Section 1961.1(a)(1)(B)2.a.i for Bernalillo county-specific sale and use.

G. Reporting on greenhouse gas requirements. Beginning model year 2011 and for each model year thereafter, each manufacturer shall submit a report to the department that includes end-of-model year data that calculates the fleet average greenhouse gas emissions for the model year just ended; the report shall include the number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to CCR Section 1961; the report shall follow the procedures in CCR, Section 1961.1 and be in the same format used to report such information to CARB.
[20.11.104.107 NMAC - N, 1/1/08]

20.11.104.108 ADDITIONAL REPORTING:

A. To determine compli-

ance with 20.11.104 NMAC, the department may require a motor vehicle manufacturer to submit any documentation that the department deems necessary to the effective administration and enforcement of 20.11.104 NMAC, including all certification materials submitted to CARB.

B. In addition to the reporting requirements in 20.11.104.106 NMAC, *ZEV Credit Bank and Reporting*, and NMAC 20.11.104.111, *Registration and Fees*, beginning with the 2011 model year and each model year thereafter, each manufacturer of a vehicle subject to 20.11.104.100 NMAC, *Applicability*, shall submit annually to the department, no later than March 31 following the close of the model year, a report documenting the total deliveries for sale within Bernalillo county of vehicles in each test group during that model year.

[20.11.104.108 NMAC - N, 1/1/08]

20.11.104.109 WARRANTIES:

A. For model year 2011 and each model year thereafter, each manufacturer of a vehicle subject to 20.11.104.100 NMAC, *Applicability*, shall warrant to the ultimate purchaser and each subsequent purchaser that the vehicle shall comply over its period of warranty coverage with all requirements of CCR Sections 2035 through 2038, 2040, and 2041.

B. For model year 2011 and each model year thereafter, a manufacturer of a vehicle subject to 20.11.104 NMAC shall include an emission control system warranty statement that complies with the requirements in CCR, Section 2039, except that a manufacturer may modify the statement for the sole purposes of informing the owner of the warranty's applicability and including a telephone number for owners to obtain answers to questions regarding the warranty.

C. Upon the department's request, a manufacturer of a vehicle subject to 20.11.104 NMAC shall submit to the department a failure of emission-related component report, or copy of the report submitted to CARB, as required by CCR, Section 2144.

[20.11.104.109 NMAC - N, 1/1/08]

20.11.104.110 RECALLS:

A. Any order issued or enforcement action taken by CARB to correct noncompliance with any section of CCR, Title 13, that results in the recall of a vehicle pursuant to CCR, Sections 2109 through 2135, shall be prima facie evidence of noncompliance of a vehicle registered in Bernalillo county. If the manufacturer demonstrates to the department's satisfaction that the order or action is not applicable to a vehicle registered in Bernalillo county,

the department shall not pursue a recall of that vehicle.

B. A voluntary or influenced emission-related recall campaign initiated by a manufacturer pursuant to CCR Sections 2113 through 2121 shall include all affected vehicles registered in Bernalillo county.

C. For any vehicle subject to an order or action under Subsection A of 20.11.104.110 NMAC, each manufacturer shall send to each owner of a vehicle registered in Bernalillo county a notice that complies with the requirements in CCR Sections 2118 or 2127, including a telephone number for owners to obtain answers to questions regarding the recall.

[20.11.104.110 NMAC - N, 1/1/08]

20.11.104.111 REGISTRATION AND FEES:

A. After January 1, 2010, no large-volume or intermediate-volume vehicle manufacturer shall deliver for sale, offer for sale, sell, import, deliver, purchase, offer for rent, offer for lease, acquire, receive, or register a motor vehicle subject or potentially subject to 20.11.104 NMAC without first obtaining a registration from the department.

B. The registration shall have a term no more than 10 years and each large and intermediate-volume manufacturer shall pay an annual registration fee to the department.

C. The department shall assess an annual registration fee of \$10,000 to each large and intermediate-volume manufacturer for the period beginning July 1 and ending June 30 of the subsequent year.

D. By April 1 each year, each large and intermediate-volume manufacturer shall pay the annual registration fee to the department.

[20.11.104.111 NMAC - N, 1/1/08]

20.11.104.112 INSPECTIONS AND INFORMATION REQUESTS:

A. For the purpose of determining compliance with 20.11.104 NMAC, the department may inspect any new and used motor vehicle, and may inspect and copy relevant, non-financial records, including records documenting vehicle origin, certification, delivery, or sales, and any record of emission-related part repairs performed under warranty.

B. For the purpose of determining compliance with 20.11.104 NMAC, the department may require a vehicle dealer or rental car agency to submit relevant, non-financial documentation related to a motor vehicle subject or potentially subject to 20.11.104 NMAC, except this subsection shall not be construed to require the creation of a new record.

C. A vehicle dealer or

rental car agency may assert a claim for a record or documentation requested pursuant to this section in accordance with 20.2.1.115 NMAC, Confidential Information Protection.

[20.11.104.112 NMAC - N, 1/1/08]

HISTORY OF 20.11.104 NMAC:
[Reserved]

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS ARTS DIVISION

This is an amendment to 4.12.1 NMAC Section 16, effective 12-15-2007.

4.12.1.16 NEW MEXICO

ARTS FUNDING REGULATIONS: The most recent publication of the "New Mexico arts funding guidelines" is hereby incorporated into this rule by reference and is subject to change on a yearly basis. For the most recent publication, call New Mexico arts or visit the website at www.nmarts.org. The New Mexico arts funding guidelines describe the policies and requirements for art and art-related educational projects advertised and administered by NMA and the commission. The guidelines are applicable to all projects advertised and contracts executed after the date this rule is promulgated by NMA and filed with the state records center.

[4.12.1.16 NMAC - Rp 4.12.1.16 NMAC, 11-13-2003; A, 12-15-2007]

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS ARTS DIVISION

This is an amendment to 4.12.10 NMAC Section 8, effective 12-15-2007.

4.12.10.8 ELIGIBILITY CRI-

TERIA: The most recent publication of the "New Mexico arts folk arts apprenticeship application guidelines" is hereby incorporated into this rule by reference and is subject to change on a yearly basis. For the most recent publication, call New Mexico arts or visit the website at www.nmarts.org. The New Mexico arts folk arts apprenticeship guidelines describe the policies and requirements for folk art projects advertised and administered by NMA and the commission. The guidelines are applicable to all projects advertised and contracts executed after the date this rule is promulgated by NMA and filed with the state records center.

[4.12.10.8 NMAC - Rp 4.12.10.8 NMAC, 11-13-2003; A, 12-15-07]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 2 AIR QUALITY
(STATEWIDE)
PART 87 GREENHOUSE GAS
EMISSIONS REPORTING**

20.2.87.1 ISSUING AGENCY:
Environmental Improvement Board.
[20.2.87.1 NMAC - N, 01/01/08]

20.2.87.2 SCOPE: All persons who own or operate an applicable source of greenhouse gas emissions in the geographic areas within the jurisdiction of the environmental improvement board.
[20.2.87.2 NMAC - N, 01/01/08]

20.2.87.3 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 Sections 74-2-5(B)(1) & 74-2-(5)(C)(5)(d) & (e).
[20.2.87.3 NMAC - N, 01/01/08]

20.2.87.4 DURATION:
Permanent.
[20.2.87.4 NMAC - N, 01/01/08]

20.2.87.5 EFFECTIVE DATE:
January 1, 2008 except where a later date is cited at the end of a section.
[20.2.87.5 NMAC - N, 01/01/08]

20.2.87.6 OBJECTIVE: The objective of this part is to establish requirements for the annual reporting of greenhouse gas emissions to the department using tools and procedures similar to those used by greenhouse gas emissions registries.
[20.2.87.6 NMAC - N, 01/01/08]

20.2.87.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC, the following definitions shall apply to terms used in this part.

A. "California climate action registry" means the voluntary registry for greenhouse gas emissions established pursuant to California Health & Safety Code D. 26, Pt. 4, Ch. 6 (West 2007).

B. "Carbon dioxide equivalent" means quantity of a given greenhouse gas multiplied by a conversion factor provided in the emissions reporting tool and procedures under Subsection B of 20.2.87.202 NMAC.

C. "Direct emissions" means emissions from sources at the facility.

D. "Emission report or inventory" means a listing, by source, of the amount of air pollutants discharged into the atmosphere.

E. "Equity share" means the extent of economic interest held in a facility, which is typically the same as ownership percentage.

F. "Facility" means any building, structure, facility, or installation that emits or may emit any greenhouse gas.

G. "Indirect emissions" means emissions that are a consequence of the operation under the control of the person filing a report, but which occur at a source owned or controlled by another entity.

H. "Metric ton" means 2204.62 pounds.

I. "Operational control" means having the authority to introduce and implement operating policies at the facility or operation.

J. "Reporting year" means the calendar year in which emissions required to be reported under this part occurred.

K. "The climate registry" means the nonprofit corporation by that name incorporated under the District of Columbia Nonprofit Corporation Act with a purpose of creating and operating a multi-state greenhouse gas emissions registry. [20.2.87.7 NMAC - N, 01/01/08]

20.2.87.8 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. [20.2.87.8 NMAC - N, 01/01/08]

20.2.87.9 CONSTRUCTION: This part shall be liberally construed to carry out its purpose. [20.2.87.9 NMAC - N, 01/01/08]

20.2.87.10 SAVINGS CLAUSE: Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions. [20.2.87.10 NMAC - N, 01/01/08]

20.2.87.11 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. [20.2.87.11 NMAC - N, 01/01/08]

20.2.87.12 to 20.2.87.199 [RESERVED]

20.2.87.200 APPLICABILITY:

A. The following shall report greenhouse gases under this part, with 2008 as the first greenhouse gas reporting year.

(1) Any owner or operator of a facility at which the sum of the nameplate capacity of all electrical generating units is equal to or greater than twenty-five megawatts of electricity.

(2) Any owner or operator of a petroleum refining facility with a North American industry classification system code 32411.

(3) Any owner or operator of a cement manufacturing facility with a North American industry classification system code 32731.

B. Owners or operators that are not required to report greenhouse gas emissions under this part may do so voluntarily.

C. Owners or operators that are required to report greenhouse gas emissions under this part may voluntarily include additional emissions that are not required under this part.

D. Owners or operators required to report greenhouse gas emissions under this part may register and verify their greenhouse gas emissions with the climate registry or the California climate action registry. Owners or operators that have so registered and verified their greenhouse gas emissions for the greenhouse gas emissions reporting year shall be deemed to be in compliance with this part for that reporting year if:

(1) the greenhouse gas emissions reported for the reporting year include, at a minimum, the emissions that would be reported for that owner or operator for that year under this part; and

(2) the department has access to, at a minimum, the information required by this regulation.

[20.2.87.200 NMAC - N, 01/01/08]

20.2.87.201 GREENHOUSE GAS EMISSIONS REPORTING REQUIREMENTS:

A. Requirements for the first reporting year. The owner or operator shall report at a minimum all direct emissions of carbon dioxide from the facility, except direct emissions from motor and nonroad vehicles.

B. Requirements for the second reporting year. The owner or operator shall report at a minimum:

(1) all direct emissions of carbon dioxide and methane from the facility, except direct emissions from motor and nonroad vehicles; and

(2) indirect greenhouse gas emissions from all electricity, steam, and heat

purchased and consumed at the facility.

C. Requirements for the third and subsequent reporting years. The owner or operator shall report at a minimum:

(1) all direct emissions of greenhouse gases from the facility, except direct emissions from motor and nonroad vehicles; and

(2) indirect greenhouse gas emissions from all electricity, steam, and heat purchased and consumed at the facility.

[20.2.87.201 NMAC - N, 01/01/08]

20.2.87.202 GREENHOUSE GAS EMISSIONS REPORTING PROCEDURES:

A. Owners or operators that meet the applicability requirements in section 20.2.87.200 NMAC shall submit annual greenhouse gas emissions reports under this part. Greenhouse gas emissions reports shall apply to a calendar year.

B. Except as provided under Subsection D of 20.2.87.200 NMAC, reporting shall be conducted using the greenhouse gas emissions reporting tool and procedures provided by the department. Such tool shall be consistent with the reporting procedures. The reporting procedures shall:

(1) be made available by the department to the public for review and comment at least sixty days prior to the beginning of a greenhouse gas emission reporting year; department notifications of the availability of the tool and procedures for review may be made electronically or in writing;

(2) be consistent, to the extent feasible, with emissions quantification methods and best practices accepted by the climate registry or the California climate action registry;

(3) include recommended methods for estimation of greenhouse gas emissions from equipment and processes for which emissions calculations are required, including conversion factors for each greenhouse gas into carbon dioxide equivalent, and the supporting data that is required for use of such methods;

(4) include alternate methods for estimation of greenhouse gases, where such alternate methods are available and appropriate;

(5) provide, as the department deems appropriate, for simplified and limited documentation of emissions that collectively account for five percent or less of total facility emissions, expressed as carbon dioxide equivalent;

(6) require that the owner or operator include in each annual report a certification signed by the owner or operator attesting that the statements and informa-

tion contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and telephone number of the certifying official;

(7) include provisions to report:

(a) the name and address of the reporting owner or operator;

(b) the name and telephone number of the person to contact regarding the emissions report;

(c) for emissions from facilities within the jurisdiction of the environmental improvement board, the county in which the facilities are located;

(d) for emissions from facilities located on tribal lands, if reported, the tribe or pueblo;

(e) for emissions from facilities located in another state or territory of the United States, if reported, the state or territory;

(f) for emissions from facilities located in another country, if reported, the country;

(g) fuel use, including amounts and specifications of each fuel type, directly related to reported emissions;

(h) the means to document methods utilized to make emissions calculations, if different from the methods incorporated into the tool;

(i) calculations for emissions of each reported greenhouse gas and the means to sum all reported greenhouse gases, in units of metric tons of carbon dioxide equivalent, including emissions occurring during regular operation, maintenance, start-ups, shutdowns, upsets, and malfunctions; and

(j) a listing, including percentages, of the owners of equity shares of the emissions reported.

C. Reporting owners or operators shall submit reports required under this part by July 1 of the year following the greenhouse gas emissions reporting year.

[20.2.87.202 NMAC - N, 01/01/08]

HISTORY of 20.2.87 NMAC:
[RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 2 AIR QUALITY
(STATEWIDE)
PART 88 EMISSION STANDARDS FOR NEW MOTOR VEHICLES**

20.2.88.1 ISSUING AGENCY.
Environmental Improvement Board.
[20.2.88.1 NMAC - N, 12/31/07]

20.2.88.2 SCOPE. All persons who deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, or register new passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty motor vehicles within the jurisdiction of the environmental improvement board.

[20.2.88.2 NMAC - N, 12/31/07]

20.2.88.3 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.
[20.2.88.3 NMAC - N, 12/31/07]

20.2.88.4 DURATION.
Permanent.
[20.2.88.4 NMAC - N, 12/31/07]

20.2.88.5 EFFECTIVE DATE.
12/31/07 except where a later date is cited at the end of a section.
[20.2.88.5 NMAC - N, 12/31/07]

20.2.88.6 OBJECTIVE. The objective of this part is to establish emission standards for new motor vehicles subject to this part.
[20.2.88.6 NMAC - N, 12/31/07]

20.2.88.7 DEFINITIONS. In addition to the terms defined in 20.2.88.7 NMAC (Definitions), and the definitions in California code of regulations ("CCR"), Title 13, sections incorporated by reference, the following definitions apply to this part, except that "California" shall mean "New Mexico" unless otherwise specified or clearly inappropriate. If a term is defined in this subsection and CCR, Title 13, Section 1900, the definition in this subsection shall apply.

A. "Air contaminant emission control system" means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine or a system or engine modification on a motor vehicle which causes a reduction of air contaminants emitted from the motor vehicle engine, including but not limited to exhaust control systems, fuel evaporative control systems and crankcase ventilating systems.

B. "Business" means an occupation, profession or trade; a person or partnership or corporation engaged in commerce, manufacturing, or a service; or a profit-seeking enterprise or concern.

C. "CARB" means California air resources board.

D. "CCR" means California code of regulations, Title 13.

E. "California-certified" means a vehicle having a valid executive order stating that the vehicle meets all applicable requirements under the applicable sections of CCR and approved for sale in California by CARB.

F. "California standards" means those emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which it has received a waiver from the United States environmental protection agency pursuant to the authority of 42 U.S.C. Section 7543 and which other states are permitted to adopt pursuant to 42 U.S.C. Section 7507.

G. "Certification" means a finding by CARB that a motor vehicle, motor vehicle engine, or air contaminant emission control system satisfies the criteria adopted by CARB for the control of specified air contaminants from motor vehicles.

H. "Clean Air Act" or "CAA" means the federal Clean Air Act, 42 U.S.C. Sections 7401 et seq.

I. "Dealer" means any person actively engaged in the business of offering to sell, solicit or advertise the sale, purchase, transfer, lease, sale or exchange of a new motor vehicle and who has an established place of business.

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

K. "Emergency vehicle" means any publicly owned vehicle operated by a peace officer in the performance of his duties, any authorized emergency vehicle used for fighting fires or responding to emergency fire calls, any publicly owned authorized emergency vehicle used by an emergency medical technician or paramedic, or any ambulance used by a private entity under contract with a public agency.

L. "Emission standards" means specified limitations on the discharge of air contaminants into the atmosphere.

M. "Executive order" means a document issued by CARB certifying that a specified test group or model year vehicle has met all applicable requirements adopted by CARB pursuant to the applicable sections of CCR for the control of specified air contaminants from motor vehicles.

N. "Fleet average greenhouse gas emission requirement" means the limitations on greenhouse gas exhaust mass emission values from passenger cars, light-duty trucks and medium-duty passenger vehicles as set forth in CCR, section 1961.1.

O. "Fleet-wide average non-methane organic gas exhaust emission requirement" means a motor vehicle

manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles subject to this regulation sold in New Mexico in any model year based on the calculation in CCR, Section 1960.1(g)(2).

P. "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single vehicle.

Q. "Light-duty truck" means any model year 2000 and subsequent motor vehicle certified to the standards in CCR, section 1961(a)(1) rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle rated at 6,000 pounds or less, which is designed primarily for the purposes of transportation of property, is a derivative of such vehicles, or is available with special features enabling off-street or off-highway operation and use.

R. "Low-emission vehicle" or "LEV" means a motor vehicle which has been certified by CARB.

S. "Medium duty passenger vehicle" or "MDPV" means any medium-duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The medium-duty passenger vehicle definition does not include any vehicle which:

(1) is an "incomplete truck"; i.e., is a truck that does not have primary load carrying device or container attached; or

(2) has a seating capacity of more than 12 persons; or

(3) is designed for more than 9 persons in seating rearward of the drivers seat; or

(4) is equipped with an open cargo area of 72.0 inches in interior length or more; a covered box not readily accessible from the passenger compartment shall be considered an open cargo area for the purpose of this definition.

T. "Medium-duty vehicle" means any pre-1995 model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 8,500 pounds or less, any 1992 through 2006 model year heavy-duty low-emission, ultra-low emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in CCR, section 1960.1(h)(2) having a manufacturer's gross vehicle weight rating of 14,000 pounds or less; and any 2000 and subsequent model heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in CCR, Sections 1961(a)(1) or 1962 having a manufacturer's gross weight rating between 8,501 and 14,000 pounds.

U. "Model year" means the manufacturer's annual production peri-

od which includes January 1, or if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

V. "Motor vehicle" or "vehicle" means every device in, upon, or by which a person or property is or may be transported otherwise than by muscular power, except motorized bicycles and devices that run only on rails or tracks.

W. "Motor vehicle engine" means an engine that is used to propel a motor vehicle.

X. "New vehicle" means any vehicle with 7,500 miles or fewer on its odometer.

Y. "Non-methane organic gas" or "NMOG" means the sum of non-oxygenated and oxygenated hydrocarbons contained in a gas sample as measured in accordance with the "California non-methane organic gas test procedures", which is incorporated herein by reference.

Z. "Passenger car" means any motor vehicle designed primarily for transportation of persons and having a design capacity equal to or less than 12 individuals.

AA. "Person" means an individual, public or private corporation, company, partnership, firm, association, society or joint stock company, municipality, state, interstate body, the United States, or any board, commission, employee, agent, officer or political subdivision, or a state, an interstate body or the United States.

BB. "Placed in service" means having been sold to an ultimate purchaser and not to a dealer or other entity in the distribution chain, and having been individually registered for on-road use by the New Mexico motor vehicle division.

CC. "Sale" or "sell" means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate purchaser.

DD. "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.

EE. "Test group" means a grouping of vehicles as defined by 40 CFR 86.1827-01.

FF. "Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person whom in good faith purchases a new motor vehicle or new motor vehicle engine for a purpose other than resale.

GG. "Vehicle identification

number" or "VIN" means a unique, 17 digit, alphanumeric code that the vehicle manufacturer assigns to a vehicle.

HH. "ZEV credit bank" means a system designated by the department that records and tracks the generation, verification, transfer, voluntary retirement, use, and invalidation of vehicle credits. [20.2.88.7 NMAC - N, 12/31/07]

20.2.88.8 DOCUMENTS. Documents incorporated and cited in this part may be viewed at the New Mexico environment department air quality bureau offices in Santa Fe.

[20.2.88.8 NMAC - N, 12/31/07]
[The current address for the New Mexico environment department air quality bureau is 1301 Siler Road, Building B, Santa Fe, NM 87507]

20.2.88.9 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. [20.2.88.9 NMAC - N, 12/31/07]

20.2.88.10 CONSTRUCTION. This part shall be liberally construed to carry out its purpose. [20.2.88.10 NMAC - N, 12/31/07]

20.2.88.11 SAVINGS CLAUSE. Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions. [20.2.88.11 NMAC - N, 12/31/07]

20.2.88.12 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. [20.2.88.12 NMAC - N, 12/31/07]

20.2.88.13 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. [20.2.88.13 NMAC - N, 12/31/07]

20.2.88.14 to 20.2.88.99
[RESERVED]

20.2.88.100 APPLICABILITY. Except as provided in 20.2.88.103 NMAC (Exemptions), no motor vehicle manufacturer, dealer, or other person shall deliver

for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register a new model year 2011 or subsequent model year passenger car, light-duty truck, medium-duty passenger vehicle, or medium-duty vehicle unless the vehicle has been certified by CARB and received a CARB executive order.

[20.2.88.100 NMAC - N, 12/31/07]

20.2.88.101 REQUIREMENTS TO MEET CALIFORNIA STANDARDS.

A. Starting with model year 2011 and each model year thereafter, no motor vehicle manufacturer, dealer, or other person shall deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive or register a new passenger car, light-duty truck, or medium-duty passenger vehicle, or medium-duty vehicle unless such vehicle is certified to the California standards.

B. Each motor vehicle manufacturer shall comply with the fleet average emission requirements and the warranty, recall, reporting, and other applicable requirements contained in this part.

C. Each motor vehicle dealer and rental car agency shall comply with the department's inspection and information requests issued pursuant to 20.2.88.112 (Inspections and Information Requests).

[20.2.88.101 NMAC - N, 12/31/07]

20.2.88.102 INCORPORATION BY REFERENCE.

A. For the purpose of applying the incorporated sections of CCR "California" means "New Mexico" and "CARB" means New Mexico environment department, unless otherwise specified or clearly inappropriate.

B. Each manufacturer of a new model year 2011 and subsequent model year passenger car, light-duty truck, medium-duty passenger vehicle, or medium-duty vehicle must comply with each applicable standard in the CCR as incorporated by reference herein. The department shall maintain copies of these sections for public inspection.

(1) Section 1900: Definitions. California effective date 1/1/2006.

(2) Section 1956.8(g) and (h): Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy Duty Engines and Vehicles. California effective date 11/15/06.

(3) Section 1960.1: Exhaust Emission Standards and Test Procedures - 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles. California effective date 3/26/04.

(4) Section 1961: Exhaust Emission Standards and Test Procedures -

2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 2/17/2007.

(5) Section 1961.1: Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 01/01/06.

(6) Section 1962: Zero-Emission Vehicle Standards for 2005 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 3/26/04.

(7) Section 1962.1: Electric Vehicle Charging Requirements. California effective date 7/24/02.

(8) Section 1965: Emission Control and Smog Index Labels - 1979 and Subsequent Model Year Vehicles. California effective date 12/04/03.

(9) Section 1968.2: Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 04/21/03.

(10) Section 1968.5: Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines. California effective date 04/21/03.

(11) Section 1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions. California effective date 2/17/07.

(12) Section 1978: Standards and Test Procedures for Vehicle Refueling Emissions. California effective date 2/17/07.

(13) Section 2035: Purpose, Applicability and Definitions. California effective date 12/26/90.

(14) Section 2037: Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles. California effective date 11/27/99.

(15) Section 2038: Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such. California effective date 11/27/99.

(16) Section 2039: Emission Control System Warranty Statement. California effective date 12/26/90.

(17) Section 2040: Vehicle Owner Obligations. California effective date 12/26/90.

(18) Section 2041: Mediation; Finding of Warrantable Condition. California effective date 12/26/90.

(19) Section 2046: Defective

Catalyst. California effective date 2/15/79.

(20) Section 2109: New Vehicle Recall Provisions. California effective date 12/30/83.

(21) Section 2111: Applicability. California effective date 12/13/06.

(22) Section 2112: Definitions. California effective date 11/15/03.

(23) Section 2113: Initiation and Approval of Voluntary and Influenced Recalls. California effective date 1/26/95.

(24) Section 2114: Voluntary and Influenced Recall Plans. California effective date 11/27/99.

(25) Section 2115: Eligibility for Repair. California effective date 1/26/95.

(26) Section 2116: Repair Label. California effective date 1/26/95.

(27) Section 2117: Proof of Correction Certificate. California effective date 1/26/95.

(28) Section 2118: Notification. California effective date 1/26/95.

(29) Section 2119: Record keeping and Reporting Requirements. California effective date 11/27/99.

(30) Section 2120: Other Requirements Not Waived. California effective date 1/26/95.

(31) Section 2121: Penalties

(32) Section 2122: General Provisions. California effective date 1/26/95.

(33) Section 2123: Initiation and Notification of Ordered Emission-Related Recalls. California effective date 1/26/95.

(34) Section 2124: Availability of Public Hearing. California effective date 1/26/95.

(35) Section 2125: Ordered Recall Plan. California effective date 1/26/95.

(36) Section 2126: Approval and Implementation of Recall Plan. California effective date 1/26/95.

(37) Section 2127: Notification of Owners. California effective date 1/26/95.

(38) Section 2128: Repair Label. California effective date 1/26/95.

(39) Section 2129: Proof of Correction Certificate. California effective date 1/26/95.

(40) Section 2130: Capture Rates and Alternative Measures. California effective date 11/27/99.

(41) Section 2131: Preliminary Tests. California effective date 1/26/95.

(42) Section 2132: Communication with Repair Personnel. California effective date 1/26/95.

(43) Section 2133: Record keeping and Reporting Requirements. California effective date 1/26/95.

(44) Section 2135: Extension of Time. California effective date 1/26/95.

(45) Section 2137: Vehicle and Engine Selection. California effective date

12/28/2000.

(46) Section 2138: Restorative Maintenance. California effective date 11/27/99.

(47) Section 2139: Testing. California effective date 8/21/2002.

(48) Section 2140: Notification and Use of Test Results. California effective date 8/21/2002.

(49) Section 2141: General Provisions. California effective date 12/28/00.

(50) Section 2142: Alternative Procedures. California effective date 2/23/90.

(51) Section 2143: Failure Levels Triggering Recall. California effective date 11/27/99.

(52) Section 2144: Emission Warranty Information Report. California effective date 11/27/99.

(53) Section 2145: Field Information Report. California effective date 11/27/99.

(54) Section 2146: Emissions Information Report. California effective date 11/27/99.

(55) Section 2147: Demonstration of Compliance with Emission Standards. California effective date 8/21/02.

(56) Section 2148: Evaluation of Need for Recall. California effective date 11/27/99.

(57) Section 2149: Notification of Subsequent Action. California effective date 2/23/90.

(58) Section 2151: New Motor Vehicle Dealer Surveillance. California effective date 12/13/83.

(59) Section 2235: Requirements. California effective date 9/17/91. [20.2.88.102 NMAC - N, 12/31/07]

20.2.88.103 EXEMPTIONS. The following vehicles are not subject to this part.

A. Military tactical vehicles.

B. Vehicles sold for registration and use in a state that is not subject to the California vehicle emission standards.

C. Previously registered vehicles with more than 7,500 miles, provided that for vehicle dealers, the mileage at the time of sale is determined by the odometer statement when the dealer acquired the vehicle.

D. Vehicles available only for rent to a final destination in a state that is not subject to the California vehicle emission standards.

E. Vehicles transferred by inheritance or as a result of divorce, dissolution, or legal separation.

F. Emergency vehicles

when a public safety agency has demonstrated to the department's satisfaction that a vehicle that shall meet the agency's needs is not otherwise reasonably available.

G. A vehicle acquired by a New Mexico resident to replace a vehicle registered to such resident that was stolen, damaged or failed beyond reasonable repair while out of state, provided that such replacement vehicle is acquired out of state when the previously-owned vehicle was stolen, damaged, or failed beyond reasonable repair.

H. A vehicle with a right-hand drive configuration that is not available in a California-certified model, purchased by a rural route postal carrier and used primarily for work.

I. Vehicles purchased by a nonresident before establishing residency in New Mexico, regardless of the mileage on the vehicle.

[20.2.88.103 NMAC - N, 12/31/07]

20.2.88.104 FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION REQUIREMENTS AND REPORTING.

A. Fleet average requirement. Effective model year 2011 and each model year thereafter, each motor vehicle manufacturer's NMOG fleet average emissions from passenger cars, light-duty trucks and medium-duty vehicles delivered for sale in New Mexico shall not exceed the Fleet Average NMOG Exhaust Emission Requirement set forth in CCR, Section 1961. Compliance shall be based on the number of vehicles, subject to this part, delivered for sale in New Mexico.

B. Fleet average NMOG exhaust emission credits and debits. Effective model year 2011 and each model year thereafter, each motor vehicle manufacturer may accrue NMOG emission credits and debits and use credits in accordance with the procedures in CCR, Section 1961. Debits and credits accrued and used shall be based on the number of vehicles subject to this part that are produced and delivered for sale in New Mexico.

C. Reporting. Effective model year 2011 and for each model year thereafter, each motor vehicle manufacturer shall submit a report to the department no later than March 1, that follows the procedures in CCR, section 1961 and in the same format used to report such information to CARB.

[20.2.88.104 NMAC - N, 12/31/07]

20.2.88.105 ZEV SALES.

A. Effective model year 2011 and each model year thereafter, manufacturers subject to this part shall produce and deliver for sale in New Mexico vehicles

that comply with the ZEV sales requirement set forth in CCR, Section 1962.

B. An intermediate volume or large volume manufacturer of ZEVs, ATPZEVs or PZEVs may use previously earned credits in accordance with CCR, Section 1962 to offset the ZEV sales requirement in Subsection A of this section. [20.2.88.105 NMAC - N, 12/31/07]

20.2.88.106 ZEV CREDIT BANK AND REPORTING.

A. Manufacturers shall establish a ZEV credit bank with New Mexico on or before January 1, 2011, and establish reporting procedures to report additions and deletions to that bank in accordance with CARB manufacturers advisory correspondence (MAC) #06-03 zero emission vehicle (ZEV) credit reporting and tracking system and Subsections B, C, D, and E of this section.

B. The department shall set aside a number of New Mexico ZEV credits proportionally equivalent to the number of ZEV credits possessed by the requesting manufacturer for use in the state of California at the beginning of the 2011 model year. This transfer shall be performed only after all credit obligations for model years 2010 and earlier have been satisfied in California. Each manufacturer's California credit balances shall be multiplied by the ratio of the average number of PCs and LDT1s produced and delivered for sale in New Mexico to the combined average number of PCs and LDT1s produced and delivered for sale in California in model years 2003 through 2005, or, alternatively, by the ratio of PCs and LDT1s produced and delivered for sale in New Mexico to the combined number of PCs and LDT1s produced and delivered for sale in California in model year 2011. In either case, the time period used to determine the credit transfer ratio shall be used to determine model year 2011 ZEV sales requirements in New Mexico. The department shall establish ZEV compliance accounts for each manufacturer and allocate the credits calculated under this subsection to such compliance accounts, including separate accounts for PZEV, AT-PZEV, NEV, Type 0 ZEVs, Type I ZEVs, Type II ZEVs, Type III ZEVs, transportation system, and extended service. The department shall notify each manufacturer of the number of ZEV credits available for use by July 31, 2011. Credits issued pursuant to this subsection may only be used in New Mexico for compliance with the ZEV provisions subject to the same requirements and limitations on credit use set forth in CCR, section 1962, adjusted for New Mexico specific vehicle numbers. Each manufacturer operating in accordance with this subsection shall do the following.

(1) By May 1, 2011, provide the department with the total number of PC and LDT1 vehicles produced and delivered for sale in New Mexico and California for 2003 through 2005 model years.

(2) Alternatively, by May 1, 2011, provide the department with the total number of PC and LDT1 vehicles to be produced and delivered for sale in New Mexico and California in model year 2011. By March 1, 2012, provide the department with actual model year 2011 PC and LDT1 vehicles produced and delivered for sale in New Mexico and California. By May 31, 2012, the department shall adjust and notify each manufacturer of the number of ZEV credits established based on actual model year 2011.

(3) By May 1, 2011, provide the department with the total number of banked California credits after all model year 2010 and earlier obligations have been met.

C. In addition to the credits transferred in accordance with subsection B of this section, manufacturers may also generate and deposit credits for vehicles delivered for sale in New Mexico during the 2009 through 2010 model years, a manufacturer shall open an account with the ZEV credit bank and submit an appropriate notice of credit generation to the department by the time such vehicles are delivered.

D. A manufacturer with an account in the ZEV credit bank may acquire credits from another manufacturer with an account in the ZEV credit bank, provided that if the credits are to be used for future compliance with the ZEV sales requirement in 20.2.88.105 NMAC (ZEV Sales), the transaction shall be recorded in the ZEV credit bank and certified by both parties to the transaction.

E. A vehicle equivalent credit shall not constitute or convey a property right.

[20.2.88.106 NMAC - N, 12/31/07]

20.2.88.107 FLEET AVERAGE GREENHOUSE GAS EXHAUST EMISSIONS AND REPORTING.

A. Effective model year 2011 and each model year thereafter, each manufacturer subject to this part shall comply with emissions standards, fleet average greenhouse gas exhaust mass emission requirements for passenger car, light-duty truck, medium-duty passenger vehicle weight classes, and other requirements of CCR, Section 1961.1, for vehicles produced and delivered for sale in New Mexico.

B. Requirements for large volume manufacturers. The fleet average greenhouse gas exhaust emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles produced and delivered for sale in New Mexico by a large volume manufacturer for model year

2011 and each model year thereafter are set forth in CCR, Section 1961.1.

C. Requirements for small, intermediate, and independent manufacturers. The fleet average greenhouse gas exhaust emission requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles delivered for sale in New Mexico by small volume, intermediate volume and independent low volume manufacturers for model year 2016 and each model year thereafter are set forth in CCR, Section 1961.1.

D. Greenhouse gas emission credits and debits. Greenhouse gas credits and debits may be accrued and used based on each manufacturer's sale of vehicles in New Mexico as set forth in CCR, Section 1961.1.

E. Optional alternative compliance with greenhouse gas emission standards. Greenhouse gas vehicle test groups that are certified pursuant to CCR, Section 1961.1(a)(1)(B)2.a in the state of California may obtain equivalent credit if delivered for sale and use in New Mexico.

F. Alternative compliance credit. To receive the credit authorized by subsection E, a manufacturer shall submit to the department the data set forth in CCR, Section 1961.1(a)(1)(B)2.a.i for New Mexico-specific sale and use.

G. Reporting on greenhouse gas requirements. Effective model year 2011 and for each model year thereafter, each manufacturer shall submit by March 31 a report to the department that includes end-of-model year data that calculates the fleet average greenhouse gas emissions for the model year just ended; the report shall include the number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to CCR, Section 1961.1; the report shall follow the procedures in CCR, Section 1961.1 and be in the same format used to report such information to CARB.

[20.2.88.107 NMAC - N, 12/31/07]

20.2.88.108 ADDITIONAL REPORTING.

A. To determine compliance with this part, the department may require a motor vehicle manufacturer to submit any documentation that the department deems necessary to the effective administration and enforcement of this part, including all certification materials submitted to CARB.

B. In addition to the reporting requirements in 20.2.88.106 NMAC (ZEV Credit Bank and Reporting) and NMAC 20.2.88.111 (Registration and Fees), beginning with the 2011 model year and each model year thereafter, each manufacturer of a vehicle subject to 20.2.88.100 NMAC (Applicability) shall submit annual-

ly to the department, no later than March 31 following the close of the model year, a report documenting the total deliveries for sale in New Mexico of vehicles in each test group during that model year.

[20.2.88.108 NMAC - N, 12/31/07]

20.2.88.109 WARRANTIES.

A. For model year 2011 and each model year thereafter, each manufacturer of a vehicle subject to 20.2.88.100 NMAC (Applicability) shall warrant to the ultimate purchaser and each subsequent purchaser that the vehicle shall comply over its period of warranty coverage with all requirements of CCR, Sections 2035 through 2038, 2040, and 2041.

B. For model year 2011 and each model year thereafter, a manufacturer of a vehicle subject to this part shall include an emission control system warranty statement that complies with the requirements in CCR, Section 2039, except that a manufacturer may modify the statement for the sole purposes of informing the owner of the warranty's applicability and including a telephone number for owners to obtain answers to questions regarding the warranty.

C. Upon the department's request, a manufacturer of a vehicle subject to this part shall submit a failure of emission-related component report, or copy of the report submitted to CARB, to the department as defined in CCR, Section 2144.

[20.2.88.109 NMAC - N, 12/31/07]

20.2.88.110 RECALLS.

A. Any order issued or enforcement action taken by CARB to correct noncompliance with any section of CCR, Title 13, that results in the recall of a vehicle pursuant to CCR, sections 2109 through 2135, shall be prima facie evidence concerning noncompliance for a vehicle registered in New Mexico. If the manufacturer demonstrates to the department's satisfaction that the order or action is not applicable to a vehicle registered in New Mexico, the department shall not pursue a recall of that vehicle.

B. A voluntary or influenced emission-related recall campaign initiated by a manufacturer pursuant to CCR, Sections 2113 through 2121 shall include all affected vehicles registered in New Mexico.

C. For any vehicle subject to an order or action under Subsection A of this section, each manufacturer shall send to each owner of a vehicle registered in New Mexico a notice that complies with the requirements in CCR, Sections 2118 or 2127, including a telephone number for owners to obtain answers to questions regarding the recall.

[20.2.88.110 NMAC - N, 12/31/07]

20.2.88.111 REGISTRATION AND FEES.

A. After January 1, 2010, no large-volume or intermediate-volume vehicle manufacturer shall deliver for sale, offer for sale, sell, import, deliver, rent, or lease a motor vehicle subject or potentially subject to this part without first obtaining a registration from the department.

B. The registration shall have a term no more than 10 years and shall be subject to an annual fee.

C. The department shall assess an annual registration fee of \$10,000 to each large and intermediate-volume manufacturer for the period beginning July 1 and ending June 30 of the subsequent year.

D. Each large and intermediate-volume manufacturer shall remit the specified amount payable to the New Mexico environment department by April 1, annually.

[20.2.88.111 NMAC - N, 12/31/07]

20.2.88.112 INSPECTIONS AND INFORMATION REQUESTS.

A. For the purpose of determining compliance with this part, the department may inspect any new and used motor vehicle, and may inspect and copy relevant, non-financial records, including records documenting vehicle origin, certification, delivery, or sales, and any record of emission-related part repairs performed under warranty.

B. For the purpose of determining compliance with this part, the department may require a vehicle dealer or rental car agency to submit relevant, non-financial documentation related to a motor vehicle subject or potentially subject to this part, except that this subsection shall not be construed to require the creation of a new record.

C. A vehicle dealer or rental car agency may assert a claim for a record or documentation requested pursuant to this section in accordance with 20.2.1.115 NMAC (Confidential Information Protection).

[20.2.88.112 NMAC - N, 12/31/07]

HISTORY OF 20.2.88 NMAC:
[RESERVED]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

This is an amendment to 20.2.2.7 NMAC, effective 01/01/08.

20.2.2.7 DEFINITIONS: The

following definitions apply to all Parts of Title 20, Chapter 2 NMAC.

A. "Administrator" means the administrator of the United States environmental protection agency (US EPA) or his or her designee.

B. "Aerodynamic diameter" means the diameter of a sphere of unit density which behaves aerodynamically the same as the particle of the test substance. It is used to predict where particles of different size and density may be deposited in the respiratory tract.

C. "Air contaminant" means any airborne substance, including but not limited to, any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay or reaction product thereof.

D. "Air pollution" means the emission, except as such emission occurs in nature, into the outdoor atmosphere of one or more air contaminants in such quantities and duration as may with reasonable probability injure human health, animal or plant life, or as may unreasonable interfere with the public welfare, visibility or the reasonable use of property.

E. "Asbestos" includes chrysolite, crocidolite, amosite, anthophyllite, tremolite, and actinolite.

F. "Board" means the New Mexico environmental improvement board or its successor agency or authority.

G. "Carbon dioxide" means the chemical compound containing one atom of carbon and two atoms of oxygen.

[G] H. "Carbon monoxide" means the chemical compound containing one atom of carbon and one atom of oxygen.

[H] I. "Department" means the New Mexico environment department or its successor agency or authority, as represented by the department secretary or his or her designee.

[H] J. "Federal act" means the Federal Clean Air Act, as amended, 42 U.S.C. sections 7401 et seq.

[J] K. "Flue" means, any duct for air, gases, or the like, such as a stack or chimney.

[K] L. "Fugitive dust" or "fugitive particulate matter" means particulate emissions which escape to the atmosphere due to leakage; materials handling, transfer or storage; travel over unpaved roads or parking areas; or other industrial activities, and which are not ducted through exhaust systems.

M. "Greenhouse gas" means any of the following: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons or sulfur hexafluoride.

ride.

[E] N. "Heavy metal" means any metal having an atomic number greater than 21.

O. "Hydrofluorocarbons" means gaseous chemical compounds containing only hydrogen, carbon, and fluorine atoms.

[M] P. "Hydrogen sulfide" means the chemical compound containing two atoms of hydrogen and one atom of sulfur.

[N] Q. "Kraft pulp" means the fibrous cellulose material produced in a kraft mill.

[O] R. "Lead" means elemental lead; alloys in which one of the elements is lead; or compounds containing lead, which are measured as elemental lead.

S. "Methane" means the chemical compound containing one atom of carbon and four atoms of hydrogen.

[P] T. "mg/m3" means milligrams per cubic meter.

[Q] U. "Nitrogen dioxide" means the chemical compound containing one atom of nitrogen and two atoms of oxygen, for the purposes of ambient determinations. The term "nitrogen dioxide," for the purposes of stack emissions monitoring, shall include nitrogen dioxide (the chemical compound containing one atom of nitrogen and two atoms of oxygen), nitric oxide (the chemical compound containing one atom of nitrogen and one atom of oxygen), and other oxides of nitrogen which may test as nitrogen dioxide.

V. "Nitrous oxide" means the chemical compound containing two atoms of nitrogen and one atom of oxygen.

[R] W. "Non-methane hydrocarbons" means any combination of hydrocarbons (chemical compounds consisting of hydrogen and carbon) excluding only the molecule methane.

[S] X. "Ozone" means the chemical compound having the molecular composition of three oxygen atoms.

[T] Y. "Particulate matter" means any airborne, finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

[U] Z. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by: applicable reference methods; an equivalent or alternative method specified by the administrator; or a test method specified in the New Mexico state implementation plan.

AA. "Perfluorocarbons" means gaseous chemical compounds containing only carbon and fluorine atoms.

[V] AB. "Person" means any individual; partnership; corporation; associ-

ation; municipality; the state or political subdivision of the state; and any agency, department, or instrumentality of the United States and any of their officers, agents, or employees.

[W] AC. “**Photochemical oxidants**” means those oxidizing chemical compounds which are the products of photo initiated reactions involving organic compounds and nitrogen oxides, consisting primarily of ozone and peroxyacetyl nitrate (PAN).

[X] AD. “**PM10**” means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

[Y] AE. “**PM10 emissions**” means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air, as measured by: an applicable reference method; an equivalent or alternative method specified by the EPA administrator; or a test method specified in the New Mexico state implementation plan.

[Z] AF. “**ppm**” means parts per million by volume.

[AA] AG. “**Ringelmann scale**” means the grading of opacity, appearance, density or shade of a smoke emission, in determining the light-obscuring power of smoke.

[AB] AH. “**Schedule of compliance**” means a schedule or timetable, acceptable to the board, which clearly sets out in detail, the steps to be taken in achieving the objectives of a regulation or standard.

[AC] AI. “**Secretary**” means the secretary of the New Mexico environment department or his or her designee.

[AD] AJ. “**Smoke**” means small gas-borne particles resulting from incomplete combustion, consisting predominantly, by not exclusively, of carbon, soot and combustible material.

[AE] AK. “**Sulfur dioxide**” means the chemical compound containing one atom of sulfur and two atoms of oxygen, for the purposes of ambient determinations. The term sulfur dioxide, for the purposes of stack emissions monitoring, shall include sulfur dioxide (chemical compound containing one atom of sulfur and two atoms of oxygen), and other oxides of sulfur which may test as sulfur dioxide.

AL. “**Sulfur hexafluoride**” means the chemical compound containing one atom of sulfur and six atoms of fluorine.

[AF] AM. “**Total reduced sulfur**” means any combination of sulfur compounds, except sulfur dioxide and free sulfur, which test as total reduced sulfur, including, but not limited to, hydrogen sulfide, methyl mercaptan, and ethyl

mercaptan.

[AG] AN. “**Total suspended particulates (TSP)**” means particulate matter as measured by the method described in 40 CFR Part 50, Appendix B.

[AH] AO. “**ug / m³**” means micrograms per cubic meter.

[AI] AP. “**US EPA**” means the United States environmental protection agency.

[AJ] AQ. “**Volatile organic compound (VOC)**” means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity.

[10/27/95; 20.2.2.7 NMAC - Rn, 20 NMAC 2.2.200 10/31/02; A, 01/01/08]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.73 NMAC, Sections 6, 7 and 300, effective 01/01/08.

20.2.73.6 OBJECTIVE: The objective of this part is to establish requirements for the submission of certain relevant information to ensure that the regulations and standards under the Air Quality Control Act and the federal act will not be violated, and to facilitate the quantification of greenhouse gas emissions in New Mexico.

[11/30/95; 20.2.73.6 NMAC - Rn, 20 NMAC 2.73.105 02/18/02; A, 01/01/08]

20.2.73.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part, the following apply.

A. “**Air pollution control equipment**” means any device, equipment, process or combination thereof the operation of which would limit, capture, reduce, confine, or otherwise control air contaminants or convert for the purposes of control any air contaminant to another form, another chemical or another physical state.

B. “**California climate action registry**” means the voluntary registry for greenhouse gas emissions established pursuant to California Health & Safety Code D. 26, Pt. 4, Ch. 6 (West 2007).

[B] C. “**Commencement**” means that an owner or operator has undertaken a continuous program of construction or modification.

[C] D. “**Construction**” means fabrication, erection, installation or relocation of a stationary source, including but not limited to temporary installations and portable stationary sources.

[D] E. “**Emission report or inventory**” means a listing, by source, of

the amount of air pollutants discharged into the atmosphere of a community.

E. “**Fuel carbon content**” means the mass of carbon per unit of heat content of a fuel.

[E] G. “**Fugitive emissions**” are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

H. “**Greenhouse gas emissions reporting year**” means the calendar year in which greenhouse gas emissions required to be reported under this part occurred.

[F] I. “**Modification**” means any physical change in, or change in the method of operation of, a stationary source which results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or which results in the emission of any regulated air contaminant not previously emitted, but does not include:

- (1) a change in ownership of the source;
- (2) routine maintenance, repair or replacement;
- (3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the federal Clean Air Act; or

(4) unless previously limited by enforceable permit conditions:

- (a) an increase in the production rate, if such increase does not exceed the operating design capacity of the source;
- (b) an increase in the hours of operation; or

(c) use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

[G] J. “**Nonattainment area**” means, for any air pollutant, an area which has been designated as a nonattainment area under Section 107 of the federal act.

[H] K. “**Operator**” means the person or persons responsible for the overall operation of a facility.

[I] L. “**Owner**” means the person or persons who own a facility or part of a facility.

[J] M. “**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.

[K] N. “**Portable stationary source**” means a source which can be relocated to another operating site with limited dismantling and reassembly, including for

example but not limited to moveable sand and gravel processing operations and asphalt plants.

[E] O. “Potential emission rate” means the emission rate of a source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the department pursuant to the Air Quality Control Act or the federal act.

[M] P. “Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design; any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable; the potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

[N] Q. “Regulated air contaminant” means any air contaminant, the emission or ambient concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the federal act.

[O] R. “Shutdown” means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units.

[P] S. “Stationary source” or “source” means any building, structure, equipment, facility, installation (including temporary installations), operation or portable stationary source which emits or may emit any air contaminant; any research facility may group its sources for the purpose of this part at the discretion of the secretary of the department.

T. “The climate registry” means the nonprofit corporation by that name incorporated under the District of Columbia Nonprofit Corporation Act with a purpose of creating and operating a multi-state greenhouse gas emissions registry.

[Q] U. “WEB source” means a stationary source that meets the applicability requirements of 20.2.81.101 NMAC.

[R] V. “Western backstop sulfur dioxide trading program” means 20.2.81 NMAC, triggered as a backstop in accordance with the provisions in the sulfur dioxide milestones and backstop trading

program implementation plan, if necessary, to ensure that regional sulfur dioxide emissions are reduced.

[11/30/95, 10/01/97; 20.2.73.7 NMAC - Rn, 20 NMAC 2.73.107 & A, 02/18/02; A, 12/31/03; A, 01/01/08]

20.2.73.300 EMISSION INVENTORY REQUIREMENTS:

A. Applicability. The requirements of 20.2.73.300 NMAC apply to the owner or operator of any stationary source located outside of Bernalillo county which:

(1) has been issued a permit under 20.2.72 NMAC (Construction Permits) during any period of time, except for toxic air pollutant permits issued under Sections 401 to 499 of 20.2.72 NMAC;

(2) is required to file a notice of intent under 20.2.73.200 NMAC; or

(3) emits in excess of 1 ton of lead or 10 tons of total suspended particulate, PM10, PM2.5, sulfur dioxide, carbon monoxide, or volatile organic compounds in any calendar year including and subsequent to 1990.

B. Reporting requirements.

(1) Any source which emits, or has the potential to emit, 5 tons per year or more of lead or lead compounds, or 100 tons per year or more of PM10, PM2.5, sulfur oxides, nitrogen oxides, carbon monoxide, or volatile organic compounds shall submit an emissions report annually.

(2) Any source defined as a major source of hazardous air pollutants under 20.2.70 NMAC (Operating Permits) shall submit an emissions report annually.

(3) Any source which is located in an ozone nonattainment area and which emits, or has the potential to emit, 25 tons per year or more of nitrogen oxides or volatile organic compounds shall submit an emissions report annually.

(4) Any source which is not required by Paragraph (1), (2), or (3) of Subsection B of this section (20.2.73.300 NMAC) to submit an emission report shall submit an emissions report under this part upon request by the department, but no more frequently than annually.

(5) Except as provided in Paragraph (8) of Subsection B of this section (20.2.73.300 NMAC), the department shall provide to the owner or operator required by this section (20.2.73.300 NMAC) to submit an emissions report a complete copy of the most current emissions report for their stationary source which is on file with the department. The department shall provide this copy to the owner or operator at least 90 days prior to the date when the source is required to submit an emissions report.

(6) The owner or operator shall submit to the department a complete, correct and current emissions report in the format specified by the department which reflects emissions during the previous calendar year.

(7) Except as provided in Paragraph (8) of Subsection B of this section (20.2.73.300 NMAC) the owner or operator shall submit the emission report by April 1 of each year in which the source is required to submit an emission report.

(8) Sources for which a date for submitting an annual emission report is specified in a current operating permit issued under 20.2.70 NMAC (Operating Permits) shall submit such report on that date. The department shall provide a copy of the previous emissions report upon request by the owner or operator of such source.

(9) Any source that is requested by the department to submit a report of greenhouse gas emissions shall:

(a) submit such report on the schedule and according to the greenhouse gas emissions reporting procedures established by the department, but not more often than annually; or

(b) report greenhouse gas emissions from the source under 20.2.87 NMAC for the greenhouse gas emissions reporting year and the two years following that year; or

(c) provide the department access to the requested information for the greenhouse gas emissions reporting year registered in either the climate registry or the California climate action registry; and

(d) keep records in support of the report for a minimum of five years.

(10) In determining the schedule of greenhouse gas emissions reports and reporting procedures, the department, subject to Paragraph (11) below, shall provide an opportunity for public comment, and shall consider:

(a) public comments regarding the schedule of such reports and greenhouse gas emissions reporting procedures;

(b) emissions quantification standards and best practices approved or recommended by federal and state agencies, by greenhouse gas emissions registries, and by non-governmental bodies having expertise in greenhouse gas emissions quantification;

(c) whether greenhouse gas emissions from a particular source or source type, considering the amount and chemical composition of the emissions, are expected to be minimal relative to emissions from other sources or source types, and

(d) whether emissions of a particular greenhouse gas from a source or source type, considering the amount and chemical composition of the emissions, are expected

to be minimal relative to the total greenhouse gas emissions from that source or source type.

(11) The schedule for greenhouse gas emissions reports and reporting procedures pursuant to Paragraphs (9) and (10) of Subsection B of 20.2.73.300 NMAC shall:

(a) subject to the department's selection of best available quantification methodologies, include a requirement that sources within North American industry classification system codes 211111, 211112, 213111, 213112, 486210, 221210, 486110, and 486910 subject to this part and permit requirements pursuant to 20.2.70 NMAC (Operating Permits) report at a minimum emissions of carbon dioxide and methane beginning no later than reporting year 2009 and for subsequent reporting years; and

(b) subject to the department's selection of best available quantification methodologies, include a requirement that sources within North American industry classification system codes 211111, 211112, 213111, 213112, 486210, 221210, 486110, and 486910 subject to this part pursuant to Paragraphs (1) and (2) of Subsection A of 20.2.73.300 NMAC, and not otherwise covered by Subparagraph (a), above, report at a minimum emissions of carbon dioxide and methane no later than reporting year 2010 and for subsequent reporting years as requested by the department.

C. Content of emissions reports. Emissions report contents for reports made under Paragraphs (1) through (8) of Subsection B of 20.2.73.300 NMAC shall include:

(1) the name, address, if any, and physical location of the stationary source;

(2) the name and telephone number of the person to contact regarding the emissions report;

(3) a certification signed by the owner, or operator, or a responsible official as defined in 20.2.70 NMAC attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and telephone number of the certifying official; for sources subject to 20.2.70 NMAC, the certification shall be made as required under that part;

(4) smelters shall submit an annual report of sulfur input, in tons/year;

(5) for each emission point, as required by the department:

(a) stack and exhaust gas parameters and location information;

(b) type of control equipment and estimated control efficiency;

(c) schedule of operation;

(d) estimated actual emissions, including fugitive emissions and emissions occurring during maintenance, start-ups,

shutdowns, upsets, and downtime of total suspended particulate, PM10, PM2.5, ammonia, sulfur oxides, nitrogen oxides, carbon monoxide, volatile organic compounds, and lead, and, if requested by the department, speciated hazardous air pollutants, in tons per year and a description of the methods utilized to make such estimates, including calculations;

(e) the annual process or fuel combustion rates; and

(f) the fuel heat, sulfur, and ash content; and

(6) all information required under the federal act.

D. Additional content for emissions reports from sources in ozone nonattainment areas. Emissions reports from sources located in ozone nonattainment areas shall include, in addition to the contents specified by Subsection C of this section (20.2.73.300 NMAC), the following information:

(1) typical daily process rate during the peak ozone season, where the peak ozone season is specified by the department; and

(2) estimated actual emissions of nitrogen oxides and volatile organic compounds, which shall be reported:

(a) for each emissions point;

(b) for each process and fuel type contributing to emissions from each point;

(c) in units of tons per year for annual emissions; and

(d) in units of pounds per day for a typical day during the peak ozone season.

E. Waiver of reporting requirements for insignificant emissions. The department may waive the requirements of Paragraph (5) of Subsection C of this section (20.2.73.300 NMAC) for emissions which the department determines to be insignificant under 20.2.70 NMAC, except that:

(1) for sources in nonattainment areas, reporting of emissions of pollutants for which the area is nonattainment shall not be waived; and

(2) reporting of emissions for which reporting is required under the federal act shall not be waived.

F. Emission tracking requirements for sulfur dioxide emission inventories. All stationary sources with actual emissions of one hundred (100) tons per year or more of sulfur dioxide in the year 2000, or in any subsequent year, shall submit an annual inventory of sulfur dioxide emissions, beginning with the 2003 emission inventory. A source that meets these criteria that then emits less than 100 tons per year in a later year shall submit a sulfur dioxide inventory for tracking compliance with the regional sulfur dioxide milestones until the western backstop sulfur dioxide trading program has been fully

implemented and emission tracking has occurred under 20.2.81.106 NMAC.

(1) All WEB sources will be subject to the following federally enforceable provisions:

(a) submit an annual inventory of sulfur dioxide emissions;

(b) document the emissions monitoring/estimation methodology used, and demonstrate that the selected methodology is acceptable under the inventory program;

(c) include emissions from start up, shut down, and upset conditions in the annual total inventory;

(d) use 40 CFR Part 75 methodology for reporting emissions for all sources subject to the federal acid rain program;

(e) maintain all records used in the calculation of the emissions, including but not limited to the following:

(i) amount of fuel consumed;

(ii) percent sulfur content of fuel and how the content was determined;

(iii) quantity of product monitoring data;

(iv) emissions monitoring data;

(v) operating data; and

(vi) how the emissions

are calculated;

(f) maintain records of any physical changes to facility operations or equipment, or any other changes that may affect the emissions projections; and

(g) retain records for a minimum of ten years from the date of establishment, or if the record was the basis for an adjustment to the milestone, five years after the date of an implementation plan revision, whichever is longer.

(2) The state shall retain emission inventory records for non-utilities for 1996 and 1998 until the year 2018 to ensure that changes in emissions monitoring techniques can be tracked.

G. Content of greenhouse gas emissions reports. Greenhouse gas emissions reports shall contain the following information, as set out in the greenhouse gas emissions reporting procedures established under Subparagraph (a) of Paragraph (9) of Subsection B of 20.2.73.300 NMAC:

(1) the name, location, and permit or notice of intent number of the stationary source;

(2) the name and telephone number of the person to contact regarding the greenhouse gas emissions report;

(3) a certification signed by the owner or operator attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and telephone

number of the certifying official;

(4) for each emission point as required by the department under the greenhouse gas emissions reporting procedures, the estimated actual emissions of greenhouse gases, including fugitive emissions and emissions occurring during maintenance, start-ups, shutdowns, upsets and downtime; and

(5) if requested by the department, the fuel type, fuel heat content, and fuel carbon content.

[11/30/95, 10/01/97; 2.20.73.300 NMAC - Rn, 20 NMAC 2.73.300 - 304 02/18/02; A, 12/31/03; A, 12/31/04; A, 01/01/08]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

Explanatory Paragraph: This is an amendment to 20.4.5.16 NMAC, Clandestine Drug Laboratory Remediation, Requirements for Remediation of Residual Contamination. Correction of a typographical error in Paragraph (9) of Subsection E, effective 1/01/2008.

20.4.5.16 REQUIREMENTS FOR REMEDIATION OF RESIDUAL CONTAMINATION. The evaluation and cleanup of residual contamination found at clandestine drug laboratories after chemicals and equipment have been removed shall meet the following standards.

...

E. Remediation Report.

The remediation report shall include the following information and documentation.

...

(9) The following statement signed by a certified industrial hygienist or principal in the remediation firm certifying that the residually contaminated portion of the property has been remediated in accordance with 20.4.5.16 NMAC. **Remediation firm's certification:** "I hereby declare that I am a certified industrial hygienist or a principle in an approved remediation firm and that this report fully and accurately describes the remediation of the clandestine drug laboratory property named in the report. I certify that I have reviewed the results of the remediation, including the post-remediation assessment results, and find that the remediation was completed pursuant to the requirements for remediation of residual contamination in ~~[20.4.5.600 NMAC]~~ 20.4.5.16 NMAC."

[20.4.5.16 NMAC - N, 1/01/2008; A, 1/01/2008]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.4 NMAC, Section 11, effective December 14, 2007

19.31.4.11 DAILY BAG, POSSESSION LIMITS AND REQUIREMENTS OR CONDITIONS:

A. Trout

(1) Waters with reduced bag limit: No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.

(2) Brown, rainbow, cutthroat, lake, Brook trout and Kokanee salmon:

(a) The daily bag limit shall be 5 trout and no more than 10 trout shall be in possession, unless otherwise specified in special trout waters, Paragraph (4) of Subsection A of 19.31.4.11 NMAC.

(b) The daily bag limit for cutthroat trout shall be 2 trout and no more than 2 cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in Subparagraph (a) of Paragraph (2) of Subsection A of 19.31.4.11 NMAC (above).

(c) The daily bag limit for lake trout shall be 2 trout and no more than 4 lake trout shall be in possession.

(3) Special Kokanee salmon season: During the special Kokanee salmon season, the daily bag limit shall be 12 Kokanee salmon in addition to the daily bag limit for trout, and no more than 24 Kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess Kokanee salmon at Heron lake and Pine river during the closed Kokanee salmon season (October 1 through the second Thursday of November).

(4) Special trout waters - On certain waters, hereafter referred to as "Special Trout Waters", the following exceptions shall apply:

(a) On those sections of the following waters the daily bag limit shall be 2 trout and no more than 2 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached: In Rio Arriba county: all waters lying within or adjacent to the Little Chama valley ranch (Edward Sargent wildlife area) including the Rio Chamito, Sexton creek, and Rio Chama, excluding Nabor creek and Nabor lake; In Colfax county: the Shuree lakes on the Valle Vidal; In Taos county: a posted portion of the Rio Pueblo between the bridge at mile marker 55 on state hwy. 518 upstream approximately 1 mile to the Canon Tio Maes trailhead; In San Miguel county: an approximately 1-1/2 mile posted portion of the Pecos river beginning approx-

imately 1/2 mile above the confluence of the Mora river (Mora-Pecos) upstream to approximately 1/4 mile above the bridge crossing at Cowles; In Rio Arriba county: a posted portion of the Chama river approximately 2.9 miles within the boundaries of the Rio Chama wildlife and fishing area; ~~[In Catron county: a posted portion of Gilita creek from the Gila wilderness boundary downstream approximately 5 miles to its confluence with Snow creek;]~~ In Rio Arriba county: a posted portion of the Rio de los Pinos from USFS Boundary 24 at the junction of forest road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos county: a posted portion of Red River from the confluence of Goose creek 1 mile upstream. In Catron county: Iron creek in the Gila wilderness upstream of the constructed waterfall barrier located in T12SR17WSec16NE. Every person angling for fish on this portion of Iron creek must be in possession of a Gila trout permit, issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

(b) In San Juan county, in a posted portion of the San Juan river, from a point beginning approximately 1/4 mile downstream of Navajo dam and extending downstream 3.5 miles to the east side of section 16: the daily bag limit shall be 1 trout and no more than 1 trout shall be in possession except in the catch-and-release section. The angler must stop fishing in the section defined once the daily bag limit is reached.

(c) On those sections of the following waters every person must comply with any special requirements listed and no fish may be kept or held in possession while fishing in the posted portions of the following waters: In San Juan county: a posted portion of the San Juan river from Navajo dam downstream approximately 1/4 mile; In Sandoval county: a posted portion of the Rio Cebolla from the Seven Springs day use area upstream to its headwaters; In Sandoval county: a posted portion of the San Antonio river from the Baca location boundary downstream approximately 2.0 miles (T. 19 N., R. 03 E., S 16 and 20); In Sandoval county: a posted portion of the Rio Guadalupe from the Porter landing bridge downstream approximately 1.3 miles to Llano Loco Spring; In Taos county: a posted portion of the Rio Costilla from the Valle Vidal tract of the Carson national forest downstream for approximately 2.4 miles to the confluence of Latir creek; In Sierra county: the Rio las Animas within the Gila national forest, Black range ranger district; In Mora county: the Pecos river in the Pecos wilderness, above Pecos falls; In Rio Arriba county: Nabor creek and Nabor lake

on the Edward Sargent wildlife area; In San Miguel and Santa Fe counties: Doctor creek from 1/4 mile above its confluence with Holy Ghost creek upstream to its headwaters; In Mora county: Rio Valdez in the Pecos wilderness from 1/4 mile below Smith cabin upstream to its headwaters; In San Miguel and Mora counties: Jack's creek from the water falls located 1/4 mile downstream of NM highway 63 crossing upstream to its headwaters; In Taos and Colfax counties: any stream on the Valle Vidal (Vermejo tract - Carson national forest); In Grant county; Black canyon creek in Grant county upstream from lower Black canyon campground. Every person angling for fish on this portion of Black canyon must be in possession of a Gila trout permit, issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

(d) In Colfax county: on a posted section of the Cimarron river from the lower end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be 1 fish and no more than one fish may be in possession.

(e) At Conservancy park/Tingley beach in Albuquerque: the southernmost pond shall be catch-and-release only.

~~(5) On the following waters, the daily bag limit shall be 3 trout and no more than 3 trout may be in possession, although there are no special restrictions regarding the use of legal gear:~~

~~(a) In Taos county: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos junction bridge.~~

~~(b) In Taos county: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River state fish hatchery downstream to its confluence with the Rio Grande.~~

~~(c) In Taos county: the designated fishing pond at Red River state fish hatchery.~~

~~(d) In Rio Arriba county: on a posted portion of the Rio Chama from the base of Abiquiu dam downstream approximately 7 miles to the river crossing bridge on U.S. 84 at Abiquiu.~~

~~(e) In Sierra county: the Rio Grande from Elephant Butte dam downstream to and including Caballo lake.~~

~~(f) In Lincoln county: The Rio Ruidoso from the boundary between the Mescalero Apache reservation and the city of Ruidoso downstream to Fridenbloom drive.~~

~~(g) In Rio Arriba county: Laguna del campo at Los Ojos trout hatchery.~~

~~(h) In Taos county: the Red River city ponds.~~

~~(6) Gila trout: It shall be unlawful for any person to possess Gila trout (*Oncorhynchus gilae*).~~

~~(f) On those sections of the following waters the daily bag limit shall be 3 trout and no more than 3 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached. Any legal angling gear and legal bait for trout waters may be used. In Taos county: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos junction bridge; In Taos county: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River state fish hatchery downstream to its confluence with the Rio Grande; In Taos county: the designated fishing pond at Red River state fish hatchery; In Taos county: the Red River city ponds; In Rio Arriba county: on a posted portion of the Rio Chama from the base of Abiquiu dam downstream approximately 7 miles to the river crossing bridge on U.S. 84 at Abiquiu; In Rio Arriba county: Laguna del campo at Los Ojos trout hatchery; In Sierra county: the Rio Grande from Elephant Butte dam downstream to and including Caballo lake; In Lincoln county: The Rio Ruidoso from the boundary between the Mescalero Apache reservation and the city of Ruidoso downstream to Fridenbloom drive.~~

~~(g) On those sections of the following waters the daily bag limit shall be 2 Gila trout and no more than 2 Gila trout in possession, and the bag limit and possession limit for brown trout is unlimited. Anglers must stop fishing in those waters when the daily bag limit is reached. Any legal angling gear and legal bait for trout waters must be used. In Catron county: waters upstream from the confluence of Gilita creek and Snow creek including Gilita, Willow and Little Turkey creeks.~~

B. Warm-water fishes:

The daily bag limit for game fish other than trout shall be as listed below and the possession limit shall be twice the daily bag limit.

- (1) striped bass 3 fish;
- (2) largemouth, smallmouth, and spotted bass 5 fish;
- (3) walleye 5 fish;
- (4) crappie 20 fish;
- (5) white bass and white bass x striped bass hybrid 25 fish;
- (6) northern pike 10 fish;
- (7) catfish (all species, except bullheads) 15 fish;
- (8) yellow perch 30 fish;
- (9) all other warm-water game species 20 fish.

C. The following exception shall apply:

- (1) At Conservancy park/Tingley beach in Albuquerque; lake Van (Chaves

county); Oasis state park; Greene Acres lake (Curry county); Burn lake (Dona Ana county); Escondida lake (Socorro county); McGaffey lake (McKinley county); Bataan lake (Eddy county); Chaparral lake (Lea county); Bosque Redondo (De Baca county); Carrizozo lake (Lincoln county); Green Meadow lake; Eunice lake; Estancia Park lake (Torrance county); Corona lake (Lincoln county); Grants city pond (Cibola county); and Jal lake (Lea county): the daily bag limit for channel catfish will be 2 fish and the possession limit shall be twice the daily bag limit.

(2) In San Juan county, in the San Juan and Animas rivers, not including Navajo lake, there is no daily bag limit or possession limit for channel catfish and striped bass.

(3) Statewide, all tiger muskie (*Esox lucius x E. masquinongy*) caught must immediately be released.

(4) In Eddy county, the Pecos river beginning at the north boundary of Brantley wildlife management area to Brantley reservoir dam including Brantley reservoir, all fish caught must immediately be released, except during official fishing tournaments during which fish may be held in a live well until they are weighed and measured, on site, and then immediately released back into the lake.

[19.31.4.11 NMAC - Rp 19.31.4.11 NMAC, 4-15-02; A, 10-31-02; A, 6-25-03; A, 8-13-04; A, 5-13-05; A, 9-15-05; A/E, 01-03-06; A, 1-31-06; A/E, 3-31-06; A/E, 5-31-06; A, 5-1-07; A, 9-14-07; A, 12-14-07]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.2 NMAC, Sections 9, 11, 12, 14 and 15, Effective January 3, 2008.

16.10.2.9 MEDICAL LICENSE BY EXAMINATION.

A. Prerequisites for licensure. Each applicant for a license to practice as a medical doctor in New Mexico must possess the following qualifications:

(1) graduated and received a diploma from a board approved school, completed a program determined by the board to be substantially equivalent to a U.S. medical school, based on board review of an evaluation by a board approved credential evaluation service, or is a graduate of a medical school located outside the United States who successfully completes two years or more of an approved postgraduate training program at an institution located in New Mexico prior to December 30, 2007;

(2) successfully passed one of the examinations or combinations of examina-

tions defined in 16.10.3 NMAC; and

(3) completed two years of postgraduate training or been approved by the board in accordance with the provisions of Section 61-6-11, B NMSA 1978;

(4) when the board has reason to believe that an applicant for licensure is not competent to practice medicine it may require the applicant to complete a special competency examination or to be evaluated for competence by other means that have been approved by the board; and

(5) a qualified applicant who has not been actively and continuously in practice for more than 2 years prior to application may be required to successfully complete a special examination or evaluation such as, but not limited to, the SPEX (special purpose examination), the PLAS (postlicensure assessment system of the federation of state medical boards), or specialty re-certification.

B. Required documentation for all applicants. Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application with a passport-quality photo taken within the previous 6 months; applications are valid for 1 year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification must be received directly from the other state board(s), and must attest to the status, issue date, license number, and other information requested and contained on the form; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine; the recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance; forms must be sent directly to the board from the recommending physician; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(4) verification of all work experience and hospital affiliations in the last

five years, if applicable, not to include postgraduate training; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(5) a copy of all ABMS specialty board certifications, if applicable; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board; and

(6) the board may request that applicants be investigated by the biographical section of the American medical association, the drug enforcement administration, the federation of state medical boards, the national practitioner data bank, and other sources as may be deemed appropriate by the board;

(7) applicants who are not United States citizens must provide proof that they are in compliance with the immigration laws of the United States.

C. Additional documentation for applicants using the FCVS. Applicants are encouraged to use the FCVS as once a credential file is created future applications for medical licensure will be streamlined. However, application through FCVS is not required. Applicants using the FCVS must submit a completed application to the FCVS, who will provide primary source documentation to the board. Only the documents required in Subsection B of 16.10.2.9 are required in addition to the FCVS report.

D. Additional documentation for applicants using HSC or another board-approved credentials verification service.

(1) status report of ECFMG certification sent directly to the board from ECFMG, if applicable;

(2) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(3) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency;

(4) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas.

E. Additional documentation for applicants applying directly to New Mexico and not using FCVS or HSC or another board-approved credentials verification service.

(1) verification of medical education form with school seal or notarized, sent directly to the board from the school;

(2) transcripts sent directly to the board from the medical school;

(3) status report of ECFMG certification sent directly to the board from ECFMG, if applicable;

(4) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(5) postgraduate training form sent to the board directly from the training program;

(6) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency; and

(7) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas;

(8) certified copies of source documents obtained directly from another state licensing jurisdiction who has the original document on file will be accepted in lieu of original documents when the originals cannot be obtained for a valid cause.

F. Licensure process. Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

G. Initial license expiration. Medical licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month. If New Mexico is the first state of licensure, initial licenses are valid for a period of not less than twenty-four months or more than thirty-five months and shall be renewed on July 1.

[16.10.2.9 NMAC - N, 5/1/02; A, 1/20/03; A, 7/1/03; A, 4/3/05; A, 10/7/05; A, 7/1/06; A, 1/10/07; A, 1/3/08]

16.10.2.11 TELEMEDICINE LICENSE.

A. Prerequisites for licensure. Each applicant for a telemedicine license must be of good moral character and hold a full and unrestricted license to practice medicine in another state or territory of the United States.

B. Required documentation. Each applicant for a telemedicine license must submit the required fees as

specified in 16.10.9.8 NMAC and the following documentation.

(1) A completed signed application, with a passport quality photo taken within 6 months. Applications are valid for 1 year from the date of receipt.

(2) Verification of licensure in all states where the applicant holds or has held a license to practice medicine, or other health care profession. Verification must be received directly from the other state(s) board, and must attest to the status, issue date, license number, and other information requested and contained on the form.

(3) Applicants who have had previous disciplinary or other action against them may be required to meet with the entire board. The board may, in its discretion, issue a license to practice medicine across state lines if it finds that the previous disciplinary or other action does not indicate that the physician is a potential threat to the public.

C. Licensure process.

Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AMA physician profile and federation of state medical boards board action databank search. When the application is complete [~~the secretary treasurer or board designee~~], a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved.

D. Initial license expiration. Telemedicine licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month.

E. Exemption from licensure requirements are defined in Section 61-6-17 of the Medical Practice Act and include a physician licensed to practice under the laws of another state who acts as a consultant to a New Mexico licensed physician on an irregular or infrequent basis not to exceed ten patients per year.

[16.10.2.11 NMAC - Rp 16 NMAC 10.2.13, 4/18/02; 16.10.2.11 NMAC - Rn & A, 16.10.2.10 NMAC; 1/20/03; A, 4/3/05; A, 7/1/06; A, 1/3/08]

16.10.2.12 POSTGRADUATE TRAINING LICENSE.

A postgraduate training license is required for all interns, residents, and fellows enrolled in board approved training programs within the state. Individuals enrolled in board approved training programs outside of New Mexico may apply for a postgraduate training license as a pre-requisite to obtaining a New Mexico public service license.

A. Prerequisites for licensure. Each applicant for a postgradu-

ate training license must possess the following qualifications:

(1) graduated from a board approved school or completed a program determined by the board to be substantially equivalent to a U.S. medical school, based on board review of an evaluation by a board approved credential evaluation service;

(2) passed part I of the USMLE; and

(3) be of good moral character.

B. Required documentation. Each applicant shall submit the required fee as specified in 16.10.9.8 NMAC and complete the board-approved application.

(1) Applicants enrolled at the university of New Mexico health science center must submit an application through the office of graduate medical education for review before it is forwarded to the board for review and approval.

(2) Applicants enrolled at a board approved training program outside New Mexico must submit the postgraduate training license application directly to the board.

(3) A copy of the official examination results must be attached to each application.

C. Licensure process.

Upon receipt of a completed signed application and fee, [~~the secretary treasurer or board designee~~] a member or agent of the board will review the application and may approve the license. The applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board.

D. License expiration.

Postgraduate training licenses are valid for no longer than one year, but may be renewed for a period not to exceed eight years or completion of the residency, whichever is shorter, and as long as the license holder is enrolled in a board approved training program. Postgraduate training licenses may be renewed prior to expiration.

[16.10.2.12 NMAC - Rp, 16 NMAC 10.2.14, 4/18/02; 16.10.2.12 NMAC - Rn, 16.10.2.11 NMAC, 1/20/03; A, 10/7/05; A, 7/1/06; A, 1/3/08]

16.10.2.14 TEMPORARY TEACHING, RESEARCH, AND SPECIALIZED DIAGNOSTIC AND TREATMENT LICENSES.

The secretary-treasurer or board designee may issue a temporary license to physicians licensed in other states or jurisdictions for the purpose of teaching, conducting research, performing specialized diagnostic and treatment procedures, implementing new technology, or for physician educational purposes in New Mexico on a temporary basis under the supervision of a New Mexico licensed physician. The following provisions apply:

A. Prerequisites for licensure. The applicant must:

(1) be otherwise qualified to practice medicine in New Mexico;

(2) hold an unrestricted license in another state or country;

(3) submit the name of the sponsoring or associating physician(s), who must be actively licensed in New Mexico.

B. Required documentation:

(1) specific program or protocol of work planned;

(2) address of sponsoring institution or organization where the work will be performed;

(3) an affidavit from the sponsoring physician attesting to the qualifications of the applicant and the purpose of the functions or medical procedures the applicant will perform;

(4) verification of licensure in state or jurisdiction where physician is practicing; and

(5) a license fee as set forth in 16.10.9 NMAC.

C. Licensure process.

Upon receipt of a completed signed application, including all required documentation and fees, board staff will request and review an AMA physician profile and federation of state medical boards board action databank search. When the application is complete [~~the secretary treasurer or board designee~~], a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

D. The applicant may perform only those functions listed in the application. The supervising physician must notify the board and obtain approval prior to any change in the activities of the temporary license holder.

E. The duration of a temporary teaching, research, or specialized diagnostic and treatment license shall not exceed three months, provided however that the license may be renewed up to three times upon payment of appropriate fees and written justification for the plan remaining in effect. After the third renewal of a temporary license the physician shall re-apply under the provisions of this rule.

[16.10.2.14 NMAC - Rp, 16 NMAC 10.3.8, 4/18/02; 16.10.2.14 NMAC - Rn, 16.10.2.13 NMAC, 1/20/03; A, 10/7/05; A, 7/1/06; A, 1/3/08]

16.10.2.15 YOUTH CAMP OR SCHOOL LICENSES.

The secretary-treasurer or board designee may approve a temporary license for physicians to provide temporary medical services to organized

youth camps or schools. Youth camp or school licenses are issued for a period not to exceed three months. Practice under the temporary license shall be limited to enrollees, leaders and employees of the camp or school. Applicants must be qualified for licensure in New Mexico and shall submit the following documentation:

A. completed signed application with a passport-quality photograph, taken within the previous 6 months, attached;

B. verification of current unrestricted license from state or jurisdiction where applicant is currently practicing or licensed;

C. verification of D.E.A. permit; and,

D. a temporary license fee as set forth in 16.10.9.8 NMAC.

E. Licensure process. Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AMA physician profile and federation of state medical boards board action databank search. When the application is complete [the secretary treasurer or board designee], a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

[16.10.2.15 NMAC - Rn, 16.10.2.14 NMAC, 1/20/03; A, 10/7/05; A, 7/1/06; A, 1/3/08]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.3 NMAC, Sections 7 and 8, Effective January 2, 2008.

16.10.3.7 DEFINITIONS:

A. "ECFMG" means educational commission for foreign medical graduates.

B. "FLEX" means federal licensing exam.

C. "LMCC" means licensee of the medical council of Canada.

D. "NBME" means national board of medical examiners.

E. "PLAS" means post-licensure assessment system.

F. "SPEX" means special purpose examination.

G. "USMLE" means the United States medical licensing examination, an examination of three separate "steps".

[16.10.3.7 NMAC - N, 4/18/02; A, 1/2/08]

16.10.3.8 Board-approved examinations for applicants who were examined prior to January 1, 2000.

~~**A.** Graduates of U. S. and Canadian medical schools must have passed the FLEX (Components 1 & 2), the NBME (Parts I, II, & III), the USMLE (Steps 1, 2, & 3), the Canadian Medical Licensing Examination (LMCC Parts 1 & 2), or one of the combination examinations listed in Paragraph C.~~

~~**B.** International Medical Graduates must have passed the ECFMG examination plus either the Federation Licensing Examination (FLEX), the NBME, the LMCC, the USMLE, or one of the combination examinations listed in Paragraph C.~~

~~**C.** Eligible combination exams include the following, as long as the entire combination is successfully completed prior to January 1, 2000;~~

~~(1) USMLE, Step 1; NBME, Parts II and III.~~

~~(2) USMLE, Steps 1 and 2; NBME, Part III.~~

~~(3) USMLE, Steps 1 and 3; NBME, Part II.~~

~~(4) NBME, Part 1; USMLE, Steps 2 and 3.~~

~~(5) NBME, Parts 1 and 2; USMLE, Step 3.~~

~~(6) NBME, Parts 1 and 3; USMLE, Step 2.~~

~~(7) ECFMG; FLEX, Component 1; USMLE, Step 3.~~

~~(8) NBME, Part 1; USMLE, Step 2; ECFMG; FLEX; Component 2; FLEX.~~

~~(9) NBME, Parts 1 and 2; ECFMG; FLEX, Component 2.~~

~~(10) USMLE, Step 1; NBME, Part 2; ECFMG; FLEX, Component 2.~~

~~(11) USMLE, Steps 1 and 2; ECFMG; FLEX Component 2; or,~~

~~(12) A New Mexico state board examination or a state board examination given in another state if that examination were equivalent to the last New Mexico state board examination. That state examination would be considered equivalent if it were to have contained both basic science and clinical components and had been taken and passed prior to the end of 1973 with a score of 75 or higher.]~~

A. Graduates of U.S. and Canadian medical schools must have passed either the **FLEX** (Components 1 & 2), the **NBME** (Parts I, II, & III), the **USMLE** (Steps 1, 2, & 3), the Canadian medical licensing examination (**LMCC** Parts 1 & 2), or a combination examination as defined in Subsection C.

B. International medical graduates must have passed the **ECFMG** examination with addition of either **NBME-III**, or **USMLE-3**, or **FLEX-2**, or must

have passed the **LMCC**.

C. Acceptable combination examinations include the following, as long as the entire combination was successfully completed as required in Section 10 of 16.10.3 NMAC prior to January 1, 2000:

(1) Any combination of sequential parts I, II, and III or Steps 1, 2, and 3 respectively of the **NBME** and **USMLE**;

(2) A New Mexico state board examination or a state board examination given in another state if that examination were equivalent to the last New Mexico state board examination. That state examination would be considered equivalent if it were to have contained both basic science and clinical components and had been taken and passed prior to the end of 1973 with a score of 75 or higher.

[16.10.3.8 NMAC - Rp 16 NMAC 10.2.9, 4/18/02; A, 1/2/08]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.4 NMAC, Section 11, Effective January 2, 2008.

16.10.4.11 ALLOWED COURSES AND PROVIDERS: The following courses and activities are acceptable for CME credit:

A. AMA PRA Category 1 Credit™ Clinical courses, lectures or grand rounds certified by an accredited sponsor of the AMA physician's recognition award, **AMA PRA Category 1 Credit™** are acceptable for credit whether taken in an on-site format or taken using the internet.

B. NEW MEXICO SPECIFIC CME. Activities certified by the New Mexico medical society (NMMS) continuing medical education committee are acceptable for credit [whether taken in an on-site format or taken using the internet]. Up to forty (40) credits in any three-year reporting period are allowed for participation in activities certified as New Mexico specific CME by the NMMS continuing education committee. New Mexico specific CME are issued by the NMMS for service[~~such as~~] on the New Mexico medical review commission and on the impaired physician committee.

C. POST GRADUATE EDUCATION. A maximum of seventy-five (75) credit hours in any three-year reporting period are allowed for participation in a postgraduate education program, which has been approved by the board or by the AMA liaison committee on graduate medical education. This category includes internships, residencies and fellowships.

D. ADVANCED DEGREES. Forty (40) credit hours are allowed for each full academic year of study

toward an advanced degree in a medical field or a medically related field as approved by the board.

E. TEACHING. One credit hour is allowed for each hour of teaching medical students or physicians in a United States medical school, an approved internship or residency or for teaching in other programs approved by the board for a maximum of forty (40) credit hours in any three-year reporting period.

F. PHYSICIAN PRECEPTORS. A maximum of thirty (30) hours of credit during a three year reporting period is acceptable for licensed physicians who are acting as preceptors for students enrolled in an accredited medical or physician assistant school.

G. PAPERS AND PUBLICATIONS. Ten (10) hours of credit are allowed for each original scientific medical paper or publication written by a licensee. For acceptance, papers must have been presented to a recognized national, international, regional or state society or organization whose membership is primarily physicians; or must have been published in a recognized medical or medically related scientific journal. Material used in a paper or publication may be given credit one time. A maximum of thirty (30) hours credit may be claimed during each three-year reporting period.

H. ADVANCED LIFE SUPPORT. Credit may be claimed during each three-year reporting period for successful completion of ACLS (advanced cardiac life support), PALS (pediatric advanced life support), ATLS (advanced trauma life support), NALS (neonatal advanced life support), and ALSO (advanced life support in obstetrics) courses.

[16.10.4.11 NMAC - Rp 16 NMAC 10.4.8, 4/18/02; A, 4/3/05; A, 9/27/07; A, 1/2/08]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.9 NMAC, Sections 8, 9 and 12, Effective January 2, 2008.

16.10.9.8 PHYSICIAN FEES:

~~[A.]~~ **A.** Application fee of \$250 for applicants providing source documentation through FCVS or HSC.]

~~[B.]~~ **A.** Application fee of \$400 [for applicants applying to the board and not using the federation credential verification service.]

~~[C.]~~ **B.** Triennial license renewal fee of ~~[\$300]~~ \$450 plus a triennial fee to support the impaired physicians program of ~~[\$100]~~ \$150.

~~[D.]~~ **C.** Temporary license fee for a temporary camp or school license of

~~[\$25]~~ \$50.

~~[E.]~~ **D.** Temporary license fee for a temporary teaching/research license of \$100.

~~[F.]~~ **E.** Processing fee of \$25 for placing a license on inactive status.

~~[G.]~~ **E.** Late fee of \$100 for all physicians who renew their license to active status, or provide required documentation after June 30 but no later than August 15 of the year of expiration.

~~[H.]~~ **G.** Late fee of ~~[\$150]~~ \$200 for physicians who renew their licenses to active status, or provide required documentation between August 16 and October 1 of the year of expiration.

~~[I.]~~ **H.** Reinstatement fee of ~~[\$200]~~ \$400, for reinstatement of a suspended license, which shall be in addition to ~~[other fees due and payable to the board.]~~ the triennial license renewal, impaired physicians program fee; and if required, nationwide criminal history screening fee.

~~[J.]~~ **L.** ~~[Duplicate license fee of \$30.]~~ Reinstatement fee of \$200 to reactivate from inactive status, which shall be in addition to the triennial license renewal, impaired physicians program fee; and if required, nationwide criminal history screening fee.

~~[K.]~~ **K.** Duplicate renewal certificate fee of \$15.]

~~[L.]~~ **J.** Postgraduate training license fee of \$10.

~~[M.]~~ **K.** Public service license fee of \$50 annually.

~~[N.]~~ **L.** Telemedicine initial licensing and triennial renewal fee of ~~[\$300]~~ \$400.

~~[O.]~~ **M.** Nationwide criminal history screening fee equal to the current federal bureau of investigation and department of public safety fee.

~~[P.]~~ **N.** Statewide criminal history fee equal to the current department of public safety fee. [16.10.9.8 NMAC - Rp 16 NMAC 10.9.8.1, 7/15/01; A, 5/1/02; A, 7/14/02; A, 1/20/03; A, 4/3/05; A, 7/1/06; A, 1/10/07; A, 9/27/07; A, 1/2/08]

16.10.9.9 PHYSICIAN ASSISTANT FEES:

A. Application fee of ~~[\$100]~~ \$150.

B. Biennial renewal of licensure fee of ~~[\$100]~~ \$150.

C. Change of primary supervising physician fee of \$25.

~~[D.]~~ **D.** Late fee of ~~[\$25]~~ \$50 for physician assistants who renew their license, or provide required documentation, after March 1 but by April 15 of the renewal year.

E. Late fee of ~~[\$50]~~ \$75 for physician assistants who renew their license, or provide required documentation,

between April 15 and May 30 of the renewal year.

F. Fee of \$25 for placing a physician assistants license on inactive status.

G. Fee of \$100 for reinstatement of a physician assistants license.

H. Nationwide criminal history screening fee equal to the current federal bureau of investigation and department of public safety fee.

I. Statewide criminal history fee equal to the current department of public safety fee.

[16.10.9.9 NMAC - Rp 16 NMAC 10.9.8.2, 7/15/01; A, 8/6/04; A, 7/1/06; A, 9/27/07; A, 1/2/08]

16.10.9.12 MISCELLANEOUS FEES:

~~[A.]~~ **A.** Verification of exam scores fee of \$15.]

~~[B.]~~ **A.** Copying fee of up to \$1.00 per page for public records.

~~[C.]~~ **B.** License verification fee of \$30 per license for a letter of good standing to confirm the verification.

~~[D.]~~ **C.** License verification fee of \$5 per license with a minimum charge of \$15 for verification of a list of licenses when the list contains the license numbers and physicians' names. No letters of good standing shall be issued for verifications from a list of this kind and notations regarding each verification shall be made on the list provided.

~~[E.]~~ **D.** Fee of \$20 per copy for annual directory of physicians.

~~[F.]~~ **E.** Returned check fee of \$25.

~~[G.]~~ **E.** List of licensees on CD - \$100

~~[H.]~~ **G.** Physician mailing labels - \$250, physician assistant mailing labels - \$50.

~~[I.]~~ **H.** Administrative reprocessing fee - no greater than current initial licensing fee.

~~[J.]~~ **L.** Waiver. The board may waive or reduce miscellaneous fees but only for good cause shown and documented. The NMMS, NMAPA, and UNMHSC will each be given one free list or CD annually. [16.10.9.12 NMAC - Rn, 16.10.9.11 NMAC, 1/10/07; A, 9/27/07; A, 1/2/08]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.11 NMAC, Section 9, Effective January 2, 2008.

16.10.11.9 APPROVAL OF SUPERVISING PHYSICIANS: A physician shall only be approved as a pharmacist clinician supervisor after the pharmacist cli-

nician registers with the board by submitting an application for authority to practice under the supervision of a licensed physician. The application shall include:

A. the name, address, phone number of the applicant and his/her proof of current certification as a pharmacist clinician by the board of pharmacy;

B. the name, address, and phone number of the supervising physician;

C. a written protocol agreed to and signed by the pharmacist clinician and the supervising physician that shall include:

(1) a statement identifying the physician authorized to prescribe dangerous drugs and the pharmacist clinician who is a party to the guidelines or protocol;

(2) a statement of the types of prescriptive authority that the pharmacist clinician is authorized to make within his scope of practice which may include:

(a) a statement of the types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case; and

(b) a general statement of the procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(c) a statement of the activities the pharmacist clinician is to follow in the course of exercising prescriptive authority, including documentation of decisions made and a plan for communication to and consultation with the supervising physician concerning specific decisions made; documentation may occur on the prescriptive record, patient profile, patient medical chart or in a separate log book; and

(d) a statement that describes appropriate mechanisms for reporting to the physician the pharmacist clinician's activities in monitoring the patients; and

(e) a statement that describes ~~provisions~~ provisions for immediate communication or consultation between the pharmacist clinician and the supervising physician or alternate supervising physician.

D. The pharmacist clinician may be authorized in the protocol to monitor dangerous drug therapy as follows:

(1) collecting and reviewing patient dangerous drug histories;

(2) measuring and reviewing routine patient vital signs including pulse, temperature, blood pressure and respiration; and

(3) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity

tests when performed in accordance with guidelines or protocols applicable to the practice setting.

E. A pharmacist clinician may only prescribe controlled substances if he/she:

(1) has obtained a New Mexico controlled substances registration and a drug enforcement agency registration, and

(2) prescribes controlled substances within the parameters of written guidelines or protocols established under these regulations and Section 3, A. of the Pharmacist Prescriptive Authority Act.

F. The protocol for each pharmacist clinician shall be reviewed by the board as least every two years.

G. A pharmacist clinician shall perform only those services that are set forth in the protocol.

H. Pharmacist clinicians may prescribe only those drugs described in a board approved protocol.

I. ~~[A physician may not supervise more than two (2) pharmacist clinicians at any given time without the prior approval of the board.] A physician may supervise as many pharmacist clinicians as the physician can effectively supervise and communicate with in the circumstances of their particular practice setting.~~

J. Within thirty days after an employer terminates the employment of a pharmacist clinician, the supervising physician and/or the pharmacist clinician shall submit a written notice to the board providing the date of termination and reason for termination. The pharmacist clinician shall not work as a pharmacist clinician until the board approves another supervising physician.

[4/5/97, 4/27/2000; 16.10.11.9 NMAC - Rn & A, 16 NMAC 10.11.9, 1/10/07; A, 1/2/08]

NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

This is an amendment to 6.27.30 NMAC, Sections 2, 7 through 20 and 22, effective December 14, 2007.

6.27.30.2 SCOPE. The purpose of this rule is to provide statewide adequacy standards for public school buildings and grounds, including buildings and grounds of charter schools. These standards shall serve to establish the ~~acceptable~~ level of standards necessary to provide and sustain the environment to meet the needs of public schools and to assist their staff in developing their buildings and grounds. The applications of these standards shall be limited to educational space needed to support educational and technology programs and curric-

ula, defined and justified as required by public education department standards and benchmarks, and that is sustainable within the operational budget for staffing, maintenance, and full utilizations of the facilities. The New Mexico public school statewide adequacy standards are dynamic and the council plans to review them ~~regularly~~ at least annually, and change them as time and circumstances require. These standards are intended for use in the evaluation of existing public school facilities and are not intended to limit the flexibility of design solutions for new construction and renovation projects. A companion document is the New Mexico public school adequacy planning guide, provided by the state for use in the programming and design of school projects to meet adequacy. The New Mexico public school adequacy planning guide is incorporated by reference into these standards.

[6.27.30.2 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.7 DEFINITIONS.

Unless otherwise specified, the following definitions apply:

A. "ancillary space" means any subordinate space necessary to support an activity or function of main programmatic space(s);

~~[A-] B.~~ "art education program" includes visual ~~[(jewelry, photography, painting, etc.)]~~ and performing ~~[(orchestra, chorus, band, etc.)]~~ arts programs;

~~[B-] C.~~ "combination school" means a school that contains the elementary, middle school/junior high school and high school or any combination thereof;

~~[C-] D.~~ "council" means the public school capital outlay council;

~~[D-] E.~~ "design capacity" means the maximum student capacity of the facility when all phases of construction are fully completed;

E. "equipment" means a specified item not affixed to the real property of a school facility;

F. "exterior envelope" means the exterior walls, floor and roof of a building;

G. "fixture" means a specified item that is affixed to the real property of a school facility;

H. "general use classroom" means a classroom space that is or can be appropriately configured for instruction in at least the areas of language arts (including bi-lingual), mathematics and social studies;

I. "infrastructure" means the on-site physical support systems needed for the operation of the school, including internal roads, and utilities, and drainage

systems, and building subsystems such as structure, mechanical, electrical, data, and telecommunications;

J. "interior finish" means an aesthetic or protective final coating or fabric applied to an exposed surface inside the building;

K. "interior surface" means any exposed area of the interior enclosure for an interior space, finished or unfinished;

L. "net sf" means a measurement from interior face of wall to interior or face of wall and calculated to obtain the net square footage of a space;

M. "planned school program capacity" means the planned number of students to be accommodated in the entire facility when all phases of construction are fully completed; these shall include students in regular education classes in combination with special education students requiring special education classrooms in compliance with public education department requirements;

~~[N.]~~ N. "qualified student or MEM" means those terms as defined in Section 22-8-2 NMSA 1978;

~~[P.]~~ "school aged persons" means that term as defined in Section 22-1-2 NMSA 1978;

~~[K.]~~ O. "school facility" means a building or group of buildings and outdoor area that are administered together to comprise a school;

~~[L.]~~ P. "school site or school campus" means one or more parcels of land where a school facility is located; more than one school facility may be located on a school site or school campus;

~~[M.]~~ Q. "space" means the net square footage located within the interior of a building;

~~[N.]~~ R. "specialty classroom" means a classroom space that is or can be appropriately configured for instruction in a specific subject such as science, physical education, special education or art;

S. "specialty program capacity" means the planned number of students to be accommodated in a specialty program area in compliance with public education department requirements; and

~~[O.]~~ T. "teacherage" means a residence that houses a teacher or administrator on site ~~and~~;

~~[P.]~~ "net sf" means a measurement from interior wall to interior wall to obtain net square feet of a space. [6.27.30.7 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.8 GENERAL REQUIREMENTS. These standards are not intended to ~~supplement, but not to~~ supersede or omit, compliance with applicable building and fire code or any other code,

regulation, law or standard that has been adopted by state agencies. ~~[Existing school buildings are not required to comply with current adopted state building codes which are required for new buildings unless this compliance is specifically mandated by law or by the code. Design of a facility shall include: ease of maintenance; centralized common use areas; natural light; ease of supervision and security; and site specific covered (protected) circulation if needed.]~~

A. Building condition. A school facility must be safe and capable of being maintained.

(1) Structural. A school facility must be structurally sound. A school facility shall be considered structurally sound and safe if the building presents no imminent danger or major visible signs of decay or distress.

(2) Exterior envelope. An exterior envelope is safe and capable of being maintained if:

(a) walls and roof are weather tight under normal conditions with routine upkeep; and

(b) doors and windows are weather tight under normal conditions with routine upkeep, and the building structural systems support the loads imposed on them.

(3) Interior surfaces. An interior surface is safe and capable of being maintained if it is:

(a) structurally sound;

(b) capable of supporting a finish;

and

(c) capable of continuing in its intended use, with normal maintenance and repair.

(4) Interior finishes. An interior finish is safe and capable of being maintained if it is:

(a) free of exposed lead paint;

(b) free of friable asbestos; and

(c) capable of continuing in its intended use, with normal maintenance and repair.

B. Building systems. Building systems in a school facility must be in working order and capable of being properly maintained. Building systems include roof, plumbing, telephone, electrical and heating and cooling systems as well as fire alarm, 2-way internal communication, appropriate technological infrastructure and security systems.

(1) General. A building system shall be considered to be in working order and capable of being maintained if all of the following apply.

(a) The system is capable of being operated as intended and maintained.

(b) Newly manufactured or refurbished replacement parts are available.

(c) The system is capable of supporting the adequacy standards established in this rule.

(d) Components of the system present no imminent danger of personal injury.

(2) Plumbing fixtures. A school facility shall be equipped with sanitary facilities in accordance with the New Mexico building code. Fixtures shall include, but are not limited to, water closets, urinals, lavatories and drinking fountains. In all new construction, restrooms shall be available so students will not have to exit the building. In existing facilities, restrooms shall be available for classrooms for grades 5 and below, and special needs classrooms, without having to exit the building, wherever possible within reasonable cost constraints.

(3) Fire alarm and emergency notification system. A school facility shall have a fire alarm and emergency notification system as required by applicable state fire codes and emergency procedures.

(4) 2-way communication system. A school facility shall have a 2-way internal communication system between a central location and each classroom, isolated office space, library, physical education space ~~and the~~, cafeteria, and other regularly-used spaces.

[6.27.30.8 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.9 CLASSIFICATION OF PUBLIC SCHOOLS. The classifications for public schools, including charter schools, under these standards are:

A. Elementary school

B. Middle school/junior high school

C. High school

D. Combination school

[6.27.30.9 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.10 SCHOOL SITE. A school site shall be of sufficient size to accommodate safe access, parking, drainage and security ~~and be of an area large enough to accommodate a school facility that complies with the net classroom square footage requirements established for the number of students at that facility~~. Additionally, the site shall be provided with an adequate source of water and appropriate means of effluent disposal.

A. Safe access. A school site shall ~~include a student drop off area or pedestrian pathway that allows students to enter the school facility without crossing vehicular traffic or allows students to use a designated crosswalk. If buses are used to transport students, a student drop off area must be configured to accommodate bus width and turning requirements. For K-5 students, if buses are used to transport students, the site shall include a separate bus drop off area, as well as a separate parent~~

~~drop-off area.] be configured for safe and controlled access that separates pedestrian from vehicular traffic. If buses are used to transport students then separate bus loading/unloading areas shall be provided wherever possible. Dedicated student drop-off and pickup areas shall be provided for safe use by student passengers arriving or departing by automobile.~~

B. Parking. A school site shall include a maintainable surfaced area that is stable, firm and slip resistant and is large enough to accommodate 1.5 parking spaces /staff FTE and one student space /four high school students. If this standard is not met, alternative parking may be approved after the sufficiency of parking at the site is reviewed by the council using the following criteria:

- (1) availability of street parking around the school;
- (2) availability of any nearby parking lots;
- (3) availability of public transit;
- (4) number of staff who drive to work on a daily basis; and
- (5) average number of visitors on a daily basis.

C. Drainage. A school site shall be configured such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding or erosion resulting in a threat to health, safety or welfare.

D. Security. ~~[A school site shall include a fenced or walled play/physical education area for students in programs for preschool children with disabilities and kindergarten and students in grades 1 through 6.]~~

~~(1) All schools shall have safe and secure site fencing or other barriers with accommodations for safe passage through openings to protect students from the hazards of traffic, railroad tracks, steep slopes, animal nuisance, and to discourage unauthorized access to the campus. This standard is met if the entire school is fenced or walled. If this standard is not met, alternative security may be approved after the sufficiency of security at the site is reviewed by the council using the following criteria:~~

- ~~(1) (a) amount of vehicular traffic near the school site;~~
- ~~(2) (b) existence of hazardous or natural barriers on or near the school site;~~
- ~~(3) (c) amount of animal nuisance or unique conditions near the school site;~~
- ~~(4) (d) visibility of the play/physical education area; and~~
- ~~(5) (e) site lighting, as required to meet safe, normal access conditions.~~

~~(2) For schools which include students below grade 6, a fenced or walled play/physical education area shall be pro-~~

vided.

[6.27.30.10 NMAC - N, 9/1/02; A, 12/14/07]

6.27.30.11 SITE RECREATION AND OUTDOOR PHYSICAL EDUCATION. A school facility shall have area, space and fixtures, in accordance with the standard equipment necessary to meet the educational requirements of the ~~[state board of education]~~ public education department, for physical education activity.

A. Elementary school. ~~[A play area and playground adjacent to the school shall be provided for physical education activities. Equipment shall be based on the design capacity of the school.]~~ Safe play area(s) and playground(s) including hard surfaced court(s) or unpaved recreation area(s) shall be conveniently accessible to the students. Play area(s) and appropriate equipment for physical education and school recreational purposes shall be provided based on the planned school program capacity.

B. Middle school/junior high school. ~~[A paved multipurpose play surface and a playing field for physical education activities shall be provided. Playing fields and equipment shall be based on the design capacity of the school.]~~ Hard surfaced court(s) and playing field(s) for physical education activities shall be provided. Playing field(s) and equipment shall be based on the planned school program capacity.

C. High school. A paved multipurpose play surface and a playing field for physical education activities shall be provided. Playing fields and equipment shall be based on the ~~[design capacity of the school]~~ planned school program capacity.

D. Combination school. A combination school shall provide the elements of the grades served by Subsections A, B and C above without duplication, but shall meet the highest standard.

[6.27.30.11 NMAC - N, 9/1/02; A, 12/14/07]

6.27.30.12 A C A D E M I C CLASSROOM SPACE. ~~[Classroom space is measured from interior wall to interior wall.] All classroom space shall meet or exceed the requirements listed below:~~

A. Classroom space - Classroom space shall be sufficient for appropriate educational programs for the class level needs.

B. Classroom fixtures and equipment

(1) Each general and specialty classroom shall contain a work surface and seat for each student in the classroom. The work surface and seat shall be appropriate for the normal activity of the class conduct-

ed in the room.

(2) Each general and specialty classroom shall have an erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction, and a display surface. A single surface may meet one or more of these purposes.

(3) Each general and specialty classroom shall have storage for classroom materials or access to conveniently located storage.

(4) Each general and specialty classroom shall have a work surface and seat for the teacher and for the aide assigned to the classroom, and it shall have secure storage for student records that is located in the classroom or is convenient to access from the classroom.

C. Classroom lighting

(1) Each general ~~[science and arts]~~ and specialty classroom shall have a light system capable of maintaining at least 50 foot-candles of well-distributed light. Provide appropriate task lighting in specialty classrooms where enhanced visibility is required.

(2) The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures.

D. Classroom temperature

(1) Each general ~~[science and arts]~~ and specialty classroom shall have a heating, ventilation and air conditioning (HVAC) system capable of maintaining a temperature between 68 and ~~[82]~~ 75 degrees fahrenheit with full occupancy.

(2) The temperature shall be measured at a work surface in the approximate center of the classroom.

E. Classroom acoustics

(1) Each general ~~[science and arts]~~ and specialty classroom shall be maintainable at a sustained background sound level of less than 55 decibels.

(2) The sound level shall be measured at a work surface in the approximate center of the classroom.

F. Classroom air quality

(1) Each general, science and arts classroom shall have an HVAC system that continually moves air and is capable of maintaining a CO₂ level of not more than 1,200 parts per million.

(2) The air quality shall be measured at a work surface in the approximate center of the classroom.

~~[G. Technology. Each classroom at a school facility shall have internet access. Each school facility shall have at least one network multimedia computer, available for student use, for every 15 students or an appropriate alternate delivery method. Computer equipment is subject to assessment under the building systems category.]~~

[6.27.30.12 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.13 GENERAL USE CLASSROOMS (LANGUAGE ARTS, MATHEMATICS AND SOCIAL STUDIES).

A. Cumulative classroom net square foot (sf) requirements, excluding ~~locker space and general~~ in-classroom storage space, shall be at least:

[A-] (1) Kindergarten	5 0
net sf/student	
[B-] (2) Grades 1 - 5	3 2
net sf/student	
[C-] (3) Grades 6 - 8	2 8
net sf/student	
[D-] (4) Grades 9 - 12	2 5
net sf/student	

B. At least 2 net sf/student shall be available for dedicated classroom storage.

C. Sufficient number of classrooms shall be provided to meet statutory student/staff ratio requirements.

[6.27.30.13 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.14 SPECIALTY CLASSROOMS.

A. Science:

(1) For grades K through 6, no additional space is required beyond the classroom requirement.

(2) For grades 7 through 12, 4 net sf/student of the ~~[grade level appropriate school population of practical and instructional science space]~~ specialty program capacity for science is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction. The space shall have science fixtures and equipment, in accordance with the standard equipment necessary to meet the educational requirements of the ~~[state board of education]~~ public education department. If an alternate science ~~[delivery]~~ learning method is used by a school district, the district shall verify the appropriate alternate fixtures and equipment to the council. Provide at least 80 net sf for securable, well-ventilated storage/prep space for each science room having science fixtures and equipment. Storage/prep room(s) may be combined and shared between more than one classroom.

B. Special education classroom. If a special education space is provided and the space is required to support educational programs, services, and curricula, the space shall not be smaller ~~[that]~~ than 450 net sf ~~[or greater than 900 net sf]~~. When the need is demonstrated, ~~[the space shall include of]~~ additional space in the classroom shall be provided with, or students shall have an accessible route to; an

accessible unisex restroom with one toilet, sink, and shower stall/tub, a kitchenette ~~[80 net sf max]~~, and at least 15 net sf of storage.

C. Art education programs. A school facility shall have classroom space to deliver art education programs, including ~~[visual, music and performing]~~ dance, music, theatre/drama, and visual arts programs, or have access to an alternate ~~[delivery]~~ learning method. ~~[The space]~~ Classroom space(s) for art education shall not be smaller than the average classroom at the facility. ~~[This space]~~ Art education classroom space(s) may be included in the academic classroom requirement and may be used for other instruction.

(1) Elementary school. ~~[A music/drama or art classroom may be the same room as the classroom or may also be used as a general use classroom, plus storage of 60 net sf.]~~ Art education programs may be accommodated within a general use or dedicated art classroom. Provide additional dedicated art program storage of 60 net sf.

(2) Middle school/junior high school. ~~[A band/orchestra/drama classroom shall have a minimum of 2.5 net sf/student of the grade level appropriate school population up to a maximum of 1,500 net sf for band/orchestra/drama, including group practice, music storage and storage rooms, two individual practice rooms and an office. A chorus room shall have a minimum of 2.5 net sf/student of the grade level appropriate school population up to a maximum of 800 net sf, including group practice rooms, an office and library. An art room shall have a minimum of 2.5 net sf/student of the grade level appropriate school population up to a maximum of 800 net sf, including storage and an office.]~~ Classroom space(s) for art education programs shall have no less than 4 net sf/student of the specialty program capacity for art. Provide additional ancillary space for group music practice, individual music practice room(s), specialized storage/library rooms, and office(s).

(3) High school. ~~[A band/orchestra/drama classroom shall have a minimum of 2.5 net sf/student of the grade level appropriate school population up to a maximum of 2,000 net sf, including group practice, music storage and storage rooms, two individual practice rooms and an office. A chorus room shall have a minimum of 2.5 net sf/student of the grade level appropriate school population up to a maximum of 1,200 net sf with a practice area and an office. An art room shall have a minimum of 2.5 net sf/student of the grade level appropriate school population up to a maximum of 1,200 net sf, including storage and an office.]~~ Classroom space(s) for art education programs shall have no less than 5 net sf/student of the specialty program capacity for art. Provide additional ancil-

lary space for group music practice, individual music practice room(s), specialized storage/library rooms, and office(s).

(4) Combination school. A combination school shall provide the elements of the grades served by paragraphs (1), (2) and (3) above without duplication ~~[, but meeting the higher standards].~~

D. Career education

(1) Elementary school. No requirement.

(2) Middle school/junior high school. Career education programs ~~[(Cooking, sewing, wood shop classrooms, etc.), shall provide a minimum of]~~ shall be provided with no less than 3 net sf/student of the [grade level appropriate school population] specialty program capacity of the school for career education. Each program lab or classroom space shall not be smaller than 650 net sf.

(3) High school. ~~[An office education, marketing, shorthand, accounting, food, nutrition, sewing, drawing, graphics, wood tech, metal tech, auto tech, transportation tech, coop training, etc., space shall have a minimum of 4 net sf/student of the grade level appropriate school population. If a school has a child development program, the space shall have a minimum of 1,100-1,500 net sf, including a lab, an observation area, a kitchen, an office, restrooms for children and adults and an outside play area of 75 net sf/child with a minimum of 1,000 net sf.]~~ Career education programs space shall be provided with no less than 4 net sf/student of the specialty program capacity of the school for career education. Each program lab or classroom space shall not be smaller than 650 net sf.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

E. ~~[Computer and key-boarding labs]~~ Technology-aided instruction. A school facility shall have space to deliver ~~[computer and keyboarding lab]~~ educational technology-aided instructional programs or have access to an alternate ~~[delivery]~~ learning method. This requirement may be distributed throughout other program spaces within the facility.

(1) Elementary school. ~~[Lab classrooms shall have a minimum of 3 net sf/student of the grade level appropriate school population, with a minimum of 700 net sf.]~~ Provide space that meets 3 net sf/student of the planned school program capacity, with no less than 700 net sf.

(2) Middle school/junior high school. ~~[Lab classrooms shall have a minimum of 3 net sf/student of the grade level appropriate school population, with a minimum of 800 net sf.]~~ Provide space that meets 3 net sf/student of the planned school

program capacity, with no less than 800 net sf.

(3) High school. ~~[Lab classrooms shall have a minimum of 3 net sf/student of the grade level appropriate school population, with a minimum of 900 net sf.]~~ Provide space that meets 3 net sf/student of the planned school program capacity, with no less than 900 net sf.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

F. Alternate delivery method. If an alternate delivery method is used by a school district ~~[to deliver instruction in science, technology, art, career education or computer and keyboarding technology, G.R.A.D.S. programs and special needs classroom(s)]~~ for instruction, the space used for the alternate method may be approved following review by the council. [6.27.30.14 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.15 P H Y S I C A L EDUCATION.

A. General requirements. A school facility shall have an area, space and fixtures for physical education activity. This space may have more than one function and may fulfill more than one standard requirement.

(1) Elementary school. ~~[For an elementary school facility, an indoor physical education teaching facility that shall have a minimum of 3.5 net sf/student of the grade level appropriate school population with a minimum of 2,400 net sf.]~~ Provide an indoor physical education teaching facility with at least 2,400 net sf. This space may have multi-purpose use in accommodating other educational program activities such as art program performances. In addition, no less than 200 net sf for office/physical education equipment storage space shall be provided.

(2) Middle school/junior high school. For a middle school/junior high school facility, an indoor physical education teaching facility that shall have a minimum of 5,200 net sf plus bleachers for 1.5 design capacity.

(3) High school. A physical education complex shall have a minimum of 6,500 net sf plus bleachers for 1.5 design capacity.

(4) Combination school. ~~[Shall provide]~~ Provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher net sf standards with bleacher capacity for [2.0 maximum design] at least 2.0-planned school program capacity. If the school includes an elementary, then it shall provide

in addition the separate space required for an elementary school. This space may have more than one function and may fulfill more than one standard requirement.

B. Additional physical education requirements. In addition to space requirements in Subsection A:

(1) Elementary school. One office shall be provided, with physical education equipment storage with a minimum of 150 net sf. This space may have more than one function and may fulfill more than one standard requirement.

(2) Middle school/junior high school. Two dressing rooms shall be provided, with lockers, showers and restroom fixtures. Two offices shall be provided, each with a minimum of 150 net sf. Each shall be provided with a telephone. Physical education equipment storage space shall be provided.

(3) High school. Two dressing rooms shall be provided, with lockers, showers and restroom fixtures. Two offices shall be provided, each with a minimum of 150 net sf. Each shall be provided with a telephone. Physical education equipment storage space shall be provided.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

[6.27.30.15 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.16 LIBRARIES AND MEDIA CENTERS/RESEARCH AREA - GENERAL REQUIREMENTS.

A. A school facility shall have space for students to access research materials, literature, non-text reading materials, books and technology. This shall include space for reading, listening and viewing materials.

(1) Elementary school. ~~[For an elementary school facility, the]~~ The area for stacks and seating space shall be [the greater of 1,000 net sf or the square footage equal to 3 net sf/student of the grade level appropriate school population] at least 3 net sf/student of the planned school program capacity, but no less than 1,000 net sf. In addition, office/workroom space and secure storage shall be provided.

(2) Middle school/junior high school or high school. ~~[For a middle school/junior high school or high school facility, the area for stacks and seating space shall be the greater of 2,000 net sf or the square footage equal to 3 net sf/student of the grade level appropriate school population]~~ The area for stacks and seating shall be at least 3 net sf/student of the planned school program capacity but no less than 2,000 net sf. In addition, office/workroom

space and secure storage shall be provided.

(3) Combination school. ~~[A combination school shall provide]~~ Provide the elements of the grades set out in [Subsections A and B] Paragraphs (1) and (2) above without duplication, but meeting the higher standards.

B. A school facility shall have library fixtures, equipment and resources in accordance with the standard equipment necessary to meet the educational requirements of the ~~[state board of education] public education department.~~

[6.27.30.16 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.17 FOOD SERVICE STANDARDS.

A. Cafeterias - general requirements

(1) Serving and dining. A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may have more than one function and may fulfill more than one adequacy standards requirement. Dining area shall be sized for the planned school program capacity to allow for a meal period requiring no more than 3 servings in compliance with public education department requirements. The dining area shall have no less than 15 net sf/seated student.

(2) Serving area shall be ~~[no less than .8 net sf/capacity of dining room and dining area shall be no less than 15 net sf/seated student.]~~

~~(a) Elementary school: should seat up to 200 students per sitting.~~

~~(b) Middle school/junior high school: should seat up to 250 students per sitting.~~

~~(c) High school: should seat up to 250 students per sitting.~~

~~(d) Combination school: shall provide the elements of the grades served by Subparagraphs (a), (b) and (c) above without duplication, but meeting the higher standards]~~ provided in addition to dining area.

(3) Fixtures and equipment. A school facility shall have space, fixtures and equipment accessible to the serving area, in accordance with the standard equipment required, for the preparation, receipt, storage or service of food to students.

(a) The space, fixtures and equipment shall be appropriate for the food service program of the school facility and shall be provided in consideration of the location of the facility and frequency of food service supply deliveries. Food service facilities and equipment shall comply with the food service and food processing regulations of the New Mexico department of environment.

(b) Fixtures and equipment should include: food prep area items, including sink, oven, range, ~~[and serving area (unless separate buffet), dishwashing area, hot storage, cold storage, dry storage (can be shared with office space) and other related appropriate staff space]~~ servicing area equipment (or buffet equipment), dishwasher, and cold storage, and other appropriate fixture and equipment items.

B. Kitchen. Kitchen and equipment shall comply with either the food preparation kitchen or the serving kitchen standards defined as follows:

(1) Food preparation kitchen - 2 net sf/meal served:

(a) Elementary school: 1,000 net sf minimum

(b) Middle school/junior high school: 1,600 net sf minimum

(c) High school: 1,700 sf minimum

(d) Combination school: shall provide the elements of the grades served by Subparagraphs (a), (b) and (c) above without duplication, but meeting the higher standards.

(2) Serving kitchen. Where food is not prepared, there shall be a minimum of 200 net sf with a hand wash sink and a phone.

[6.27.30.17 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.18 OTHER FACILITY AREAS.

A. Parent workspace. ~~[If parents are invited to assist with school activities, a]~~ A school facility shall include a workspace for use by parents. If this space is provided, it shall consist of ~~[1 net sf/student of the grade level appropriate school population with a minimum of 150 net sf and a maximum of 800 net sf]~~ at least .5 net sf/student of the planned school program capacity but no less than 150 net sf. The space may consist of more than one room and may have more than one function.

B. Administrative space. A school facility shall have space to be used for the administration of the school. The space shall consist of a minimum of 150 net sf, plus 1.5 net sf/student of the ~~[grade level appropriate school population, up to a maximum of 2,500 net sf]~~ planned school program capacity.

C. Student health, counseling and ancillary space. A school facility shall have space to isolate a sick student from the other students and may include space for the delivery of other health, counseling, testing and ancillary programs. This space shall be a designated space that is accessible to a restroom, and shall consist of at least 1 net sf/student of the [grade level appropriate school population] planned school program capacity with a minimum of

150 net sf [and a maximum of 1,000 net sf]. The space may consist of more than one room and may have more than one function. This space shall include a telephone.

D. Faculty workspace or teacher lounge. A school facility shall have workspace available to the faculty. This space is in addition to any workspace available to a teacher, in or near a classroom. The space shall consist of 1 net sf/student of the ~~[grade level appropriate school population, with a minimum of 150 net sf and a maximum of 800 net sf.]~~ planned school program capacity with no less than 150 net sf. The space may consist of more than one room and may have more than one function. This space shall include a break area with a sink.

[6.27.30.18 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.19 GENERAL STORAGE (EXCLUDES LOCKERS, JANITORIAL, KITCHEN ~~[OR]~~, GENERAL CLASSROOM, SPECIALTY CLASSROOMS, AND ADMINISTRATIVE STORAGE). For storage, ~~[3 net sf /K-5 grade student of the grade level appropriate school population, and 2 net sf/6-12 grade student of the grade level appropriate school population]~~ at least 1 net sf/student of the planned school program capacity may be distributed in or throughout any type of room or space, ~~[including classrooms,]~~ but may not count toward required ~~[minimum]~~ room square footages. General storage must ~~[include some secured storage]~~ be securable and include textbook storage.

[6.27.30.19 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.20 MAINTENANCE OR JANITORIAL SPACE. Each school shall designate .5 net sf /student of the ~~[grade level appropriate school population]~~ planned school program capacity for maintenance or janitorial space. Janitorial space shall include a janitorial sink.

[6.27.30.20 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07]

6.27.30.22 STANDARDS VARIANCE.

A. The council may grant a variance from any of the adequacy standards. The council shall grant a variance if it determines that the intent of the standard can be met by the school district in an alternate manner, or if a variance is required for appropriate programmatic needs as demonstrated by the district. If the council grants the variance, the school district shall be deemed to have met the standard.

B. The council may, with adequate justification, also grant a variance from any of the provisions of the New Mexico public school adequacy planning

guide provided by the state for use in the programming and design of school projects to meet adequacy. Such variance shall be considered through an appeal to the council by the school district following a final administrative interpretation of the planning guide. Procedures for achieving final administrative interpretation and filing an appeal to the council for a variance are as provided for in the planning guide document.

[6.27.30.22 NMAC - N, 9/1/02; A, 12/14/07]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2007

Volume XVIII	Submittal Deadline	Publication Date
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

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Volume XIX	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 29
Issue Number 5	March 3	March 14
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