

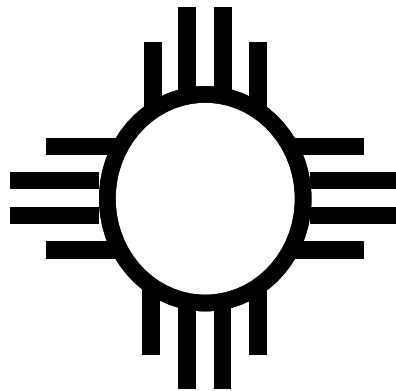
**NEW
MEXICO
REGISTER**



Volume XX
Issue Number 2
January 30, 2009

New Mexico Register

**Volume XX, Issue Number 2
January 30, 2009**



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

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Administrative Law Division
Santa Fe, New Mexico
2009

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New Mexico Register

Volume XX, Number 2

January 30, 2009

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Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF POSTPONEMENT OF HEARING

On February 11, 2009, at 5:30 pm, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) was scheduled to hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing has been postponed until further notice.

This hearing was to address a proposal to amend 20.11.2 NMAC, *Fees*, and to incorporate the complete and amended 20.11.2 NMAC, into the New Mexico State Implementation Plan for air quality (SIP); as well as a proposal to update the Title V Operating Permits Program by incorporating the aforementioned proposed amendments to 20.11.2 NMAC into the Title V Program where applicable.

Questions regarding this action may be directed to Hearing Clerk, Ms. Janice Amend, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103 or electronically at Jamend@cabq.gov or by phone, 768-2601.

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

NEW MEXICO ANIMAL SHELTERING SERVICES BOARD

Regulation and Licensing Department - Animal Sheltering Services Board LEGAL NOTICE OF POSTPONEMENT OF PUBLIC HEARING AND NOTICE OF BOARD MEETING

The Regulation and Licensing Department, Animal Sheltering Services Board ("Board"), hereby gives notice that the Board has postponed to a future date the Public Hearing previously scheduled for February 18, 2009, with respect to the adoption of rules as follows:

Title 16, Chapter 24, Part 1 A n i m a l Sheltering Services, General Provisions
Title 16, Chapter 24, Part 2 A n i m a l Sheltering Services, Licensure and Certification

Title 16, Chapter 24, Part 3 A n i m a l Sheltering Services, Duties of Licensees and Certificate Holders

Title 16, Chapter 24, Part 4 A n i m a l Sheltering Services, Complaints, Enforcement and Disciplinary Action

Title 16, Chapter 24, Part 5 A n i m a l Sheltering Services, Fees

The New Mexico Animal Sheltering Services Board will convene a **Regular Board Meeting** to take care of regular business on February 18, 2009 at 10:00 a.m. at the Regulation and Licensing Department offices located at 5200 Oakland Avenue NE, Albuquerque, New Mexico, 87113. The public is welcome to attend. Portions of the regular meeting may be closed to the public while the Board is in Executive Session. A final agenda for the meeting will be available at least 24 hours prior to the meeting and may be obtained by making a written request to the Board at P.O. Box 25101, Santa Fe, New Mexico 87504, by calling (505) 476-4795, by emailing the Board Administrator at helga.schimkat@state.nm.us to be added to the Board's email list for meeting notifications and agendas, or by checking the Board's website at: www.rld.state.nm.us/AnimalSheltering/index.html.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the meeting, please contact the board office at soon as possible. Public documents, including the agenda and min-

utes, can be provided in various accessible formats. Please contact the board office if a summary or other type of accessible format is needed.

Helga Schimkat, Administrator
Animal Sheltering Services Board
P.O. Box 25101
Santa Fe, New Mexico 87504

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on April 6, 2009 at 10:00 a.m. in Room 317 at the State Capital in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 08-15 (R), proposed revisions to Air Quality Control Regulations 20.2.99 New Mexico Administrative Code (NMAC) (Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects).

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

The purpose of the public hearing is to consider and take possible action on a petition from the NMED regarding proposed revisions to 20.2.99 NMAC. These proposed revisions would incorporate provisions necessary to make 20.2.99 NMAC consistent with Clean Air Act section 176(c) as amended by the Safe Accountable Flexible Efficient Transportation Equity Act or SAFETEA-LU on August 10, 2005 (Pub. L. 109-59). The proposed revisions also include minor amendments required by federal regulations that are not related to SAFETEA-LU.

The proposed revised regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 1301 Siler Road, Building B, Santa Fe, New Mexico. Full text of NMED's proposed revised regulations are available on NMED's web site at www.nmenv.state.nm.us, or by contacting Gail Cooke at (505) 476-4319 or gail.cooke@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking

Procedures - Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section, 74-2-6 NMSA 1978, and other applicable procedures.

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

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on March 23, 2009, and should reference the docket number, EIB 08-15 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

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

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

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

Persons having a disability and needing help in being a part of this hearing process

should contact Judy Bentley by March 23, 2009 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

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

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NOTICE OF PUBLIC HEARING

The New Mexico Environmental Improvement Board ("the Board") will hold a public hearing after its regularly convened meeting on April 6, 2009 at 10 a.m. and continuing on April 7, 2009 if necessary in Room 317, State Capitol, Santa Fe, New Mexico 87501, for the purpose of hearing the matter in EIB No. 08-18 (R), the New Mexico Environment Department's ("NMED") proposal to adopt amendments to 20.5.1 NMAC (General Provisions), 20.5.7 NMAC (Reporting and Investigation of Suspected and Confirmed Releases), 20.5.10 NMAC (Administrative Review), 20.5.12 NMAC (Corrective Action for Storage Tank Systems Containing Petroleum Products), 20.5.13 NMAC (Corrective Action for UST Systems Containing Other Regulated Substances), 20.5.14 NMAC (Certification of Tank Installers), 20.5.15 NMAC (Corrective Action Fund Use and Expenditures), 20.5.16 NMAC (Qualification of Persons Performing Corrective Action), and 20.5.18 NMAC (Operator Training).

Earlier this year, the Environmental Improvement Board (the Board) adopted rules implementing some of the prevention and secondary containment requirements of the federal Energy Policy Act of 2005 (EPAAct). To meet EPAAct's upcoming deadlines, and improve departmental procedures, NMED is now asking the Board to adopt the proposed amendments and new rules which will impose operator training and certification requirements, improve management of the Corrective Action Fund, allow the return of properties to productive use after remediation,

change and streamline requirements for certified tank installers, clarify procedures for investigating and reporting releases, establish standards for the qualification and disqualification of contractors, expand administrative review procedures, and create a fourth priority in the leaking storage tank ranking system.

Interested persons may review the proposed amendments during regular business hours at the NMED Petroleum Storage Tank Bureau, 1301 Siler Road, Building B, Santa Fe, NM; NMED's Albuquerque Field Office, 5500 San Antonio Drive NE, Albuquerque, NM; on NMED's website at www.nmenv.state.nm.us; or by contacting Jennifer Pruett at (505) 476-4392 or Jennifer.Pruett@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC, Rulemaking Procedures for the Environmental Improvement Board; the Environmental Improvement Act, Section 74-1-9 NMSA 1978; the Hazardous Waste Act, Section 74-4-5 NMSA 1978; and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses.

Persons wishing to present technical testimony must file a written notice of intent that:

- (1) identifies the person for whom the witness(es) will testify;
- (2) identifies each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) summarizes or includes a copy of the direct testimony of each technical witness and states the anticipated duration of the testimony of that witness;
- (4) attaches the text of any recommended modifications to the proposed regulatory changes; and
- (5) lists and describes, or attaches, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rules.

Notices of intent should reference the docket number, EIB No. 08-18 (R) and the date of the hearing, and must be received in the Board's Office at the following address no later than 5:00 pm on March 20, 2009:

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

Persons, including members of the public, wishing to present non-technical testimony may do so without prior notification. Any such person also may offer exhibits in support of his testimony. Alternatively, any such person may submit a written statement for the record prior to or at the hearing.

Persons having a disability and needing help to participate in this hearing process should contact Judy Bentley by March 16, 2009 at the NMED, Human Resources Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users may access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulation at the conclusion of the hearing or may convene another meeting for that purpose.

NEW MEXICO GENERAL SERVICES DEPARTMENT STATE PURCHASING DIVISION

THE NEW MEXICO GENERAL SERVICES DEPARTMENT

NOTICE OF PUBLIC HEARING

The New Mexico General Services Department (GSD) will hold a public hearing for the purpose of receiving oral and written public comment on revisions to Rule Number 1.4.4, Governmental Advertising Rates. The purpose of the proposed rule revision is to increase the maximum allowable advertising rates for all legal notices or advertisements that governmental entities are required to publish in newspapers of general circulation.

The hearing is scheduled on March 4, 2009, from 10:00 a.m. to 11:00 a.m. in the State Purchasing Division Bid Room, located in the first floor atrium of the Joseph Montoya Office Building, 1100 S. St. Francis Drive, Santa Fe, NM, 87505. A copy of the rule may be downloaded from the SPD web site at <http://www.generalservices.state.nm.us/spd/> or by going to the State Purchasing Division in Room 2016 at the same address noted above.

The hearing will be held before Michael Vinyard, State Purchasing Agent. Interested persons may also present their views by written statements, submitted on or before March 2, 2009, to the State Purchasing Division, 1100 S. St. Francis Dr., Room 2016, Santa Fe, NM, 87505, Attention: Michael Vinyard. Questions may be directed to the State Purchasing Division at Michael.vinyard@state.nm.us or 505-

827-0472.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form should contact Michael Vinyard at (505) 827-0472 at least ten (10) days before the hearing.

NEW MEXICO DEPARTMENT OF HEALTH EPIDEMIOLOGY AND RESPONSE DIVISION

NOTICE OF PUBLIC HEARING The New Mexico Department of Health will hold a public hearing on 7.4.3 NMAC "Control of Disease and Conditions of Public Health Significance". The Hearing will be held on Tuesday, March 10 at 9:00 AM in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico. The public hearing will be conducted to add or remove certain diseases or conditions from the index of notifiable conditions and make certain clarifications and modifications to the existing regulation. A copy of the proposed regulation can be obtained from: Monica Roybal, Management Analyst, Infectious Disease Epidemiology Bureau, P.O. Box 26110 Santa Fe, NM 87502-6110 (505) 476-3035. Please submit any written comment regarding the proposed regulation to: Michael Landen, Deputy State Epidemiologist, New Mexico Department of Health, P.O. Box 26110 Santa Fe, NM 87502-6110 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 Monica Roybal by telephone at 505-476-3035. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to obtain comment on emergency interim rules in the General Assistance Cash Program. The hearing will be held at 9:00 am on March 02, 2009. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The state food stamp supplement program is aimed at providing the elderly and disabled with increased food purchasing power resulting in better nutrition. This amount of this allotment is based on the availability of state funds; this register proposes to increase this allotment from a \$20.00 maximum benefit amount to \$25.00.

The interim regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRregisters.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

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

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

You may send comments electronically to: vida.tapia-sanchez@state.nm.us

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to obtain comment on emergency interim rules in the General Assistance Cash Program. The hearing will be held at 10:00 am on March 02, 2009. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

New Mexico proposes to increase access to the buying power of food stamps by instituting the New Mexico Combined Application Project (NMCAP). The combined application project for food stamp benefit assistance, among elderly and disabled populations receiving Supplemental Security Income (SSI) populations is authorized by a state demonstration project via a joint partnership with Food and Nutrition Services (FNS) and Social Security Administration (SSA).

The interim regulation is available on the Human Services Department website at

http://www.hsd.state.nm.us/isd/ISDRegister_s.html. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

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

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

You may send comments electronically to:
vida.tapia-sanchez@state.nm.us

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to obtain comment on emergency interim rules in the General Assistance Cash Program. The hearing will be held at 10:00 am on March 03, 2009. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Department proposes to synchronize regulation in order to maintain consistency in field procedure and case management. With this intent this register will align the benefit effective date of all cash assistance programs. The initiation of the first month of benefit payment is effective from the date of authorization or from the 30th day after application, whichever is earlier.

The interim regulation is available on the Human Services Department website at http://www.hsd.state.nm.us/isd/ISDRegister_s.html. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

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

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

You may send comments electronically to:
vida.tapia-sanchez@state.nm.us

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a rulemaking and public hearing will be held in the Boardroom, 4900 Alameda Blvd NE, Albuquerque, New Mexico, commencing at 9:00 a.m. on Thursday, February 12, 2009. The Commission will hold a discussion to consider adoption of the proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No.15.2.6.9 (Medication Restrictions).

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

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

Julian Luna
Agency Director

Dated: January 14, 2009

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING

NOTICE IS HEREBY GIVEN that a rulemaking meeting will be held, immediately following a public hearing on the proposed rule, in the Boardroom, 4900 Alameda Blvd NE, Albuquerque, New Mexico, commencing at 11:00 a.m. on

Thursday, February 12, 2009. The Commission will consider adoption of the proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No.15.2.6.9 (Medication Restrictions).

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

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

Julian Luna
Agency Director

Dated: January 14, 2009

End of Notices and Proposed Rules Section

Adopted Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.63 NMAC, Sections 1, 2, & 11, effective 2/16/09. These amendments are being made in furtherance of our effort to update delegation by EPA of 40 CFR Part 60 to the Albuquerque-Bernalillo County Air Quality Control Board.

20.11.63.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) [768-2600] 768-2601.

[1/1/2000; 20.11.63.1 NMAC - Rn, 20 NMAC 11.63.1, 10/1/02; A, 1/1/05; A, 2/16/09]

20.11.63.2 SCOPE: 20.11.63 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to the requirements of 40 CFR Part 60, as amended in the *Federal Register* through [~~October 28, 2006~~] August 1, 2008.

A. Exempt: 20.11.63 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

B. Exclusions:
(1) 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters.
(2) Reserved.

C. Variances: The variance provisions of 20.11.7 NMAC, Variance Procedure, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinance 94-5, Section 8, and NMSA 1978 Section 74-2-8 shall not apply to 20.11.63 NMAC or the incorporated federal standards.

[1/1/2000; 20.11.63.2 NMAC - Rn, 20 NMAC 11.63.2, 10/1/02; A, 1/1/05; A, 1/1/06; A, 1/15/07; A, 2/16/09]

20.11.63.11 INCORPORATION OF FEDERAL STANDARDS: Except as otherwise provided in 20.11.63 NMAC, the New Source Performance Standards promulgated by the United States environmental protection agency, and codified at 40 CFR Part 60, including Subpart A-General Provisions thereto, as amended in the *Federal Register* through [~~October 28, 2006~~] August 1, 2008, are hereby incorpo-

rated into 20.11.63 NMAC.

[1/1/2000; 20.11.63.11 NMAC - Rn, 20 NMAC 11.63.11, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09]

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.64 NMAC, Sections 1, 2, 11 & 12, effective 2/16/09. These amendments are being made in furtherance of our effort to update delegation by EPA of 40 CFR Part 61 and 40 CFR Part 63 to the Albuquerque-Bernalillo County Air Quality Control Board.

20.11.64.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) [768-2600] 768-2601.

[1/1/2000; 20.11.64.1 NMAC - Rn, 20 NMAC 11.64.1, 10/1/02; A, 1/1/05; A, 2/16/09]

20.11.64.2 SCOPE: 20.11.64 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to any requirements of 40 CFR Part 61 or Part 63, as amended in the *Federal Register* through [~~October 28, 2006~~] August 1, 2008.

A. Exempt: 20.11.64 NMAC does not apply to sources within Bernalillo county, that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

B. Exclusions:
(1) 40 CFR 61, Subpart B, National Emission Standards for Radon Emissions From Underground Uranium Mines;

(2) 40 CFR 61, Subpart H, National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities;

(3) 40 CFR 61, Subpart I, National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H;

(4) 40 CFR 61, Subpart K, National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants;

(5) 40 CFR 61, Subpart Q,

National Emission Standards for Radon Emissions From Department of Energy Facilities;

(6) 40 CFR 61, Subpart R, National Emission Standards for Radon Emissions From Phosphogypsum Stacks;

(7) 40 CFR 61, Subpart T, National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings; and

(8) 40 CFR 61, Subpart W, National Emission Standards for Radon Emissions From Operating Mill Tailings.

C. Variances: The variance provisions of 20.11.07 NMAC, Variance Procedure, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinance 94-5, Section 8 and NMSA 1978 Section 74-2-8 shall not apply to 20.11.64 NMAC or the incorporated federal standards.

[1/1/2000; 20.11.64.2 NMAC - Rn, 20 NMAC 11.64.2, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09]

20.11.64.11 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 61: Except as otherwise provided, the National Emission Standards for Hazardous Air Pollutants, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 61, including Subpart-A, General Provisions thereto, as amended in the *Federal Register* through [~~October 28, 2006~~] August 1, 2008, are hereby incorporated into 20.11.64 NMAC.

[1/1/2000; 20.11.64.11 NMAC - Rn, 20 NMAC 11.64.11, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09]

20.11.64.12 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 63: Except as otherwise provided, the National Emissions Standards for Hazardous Air Pollutants for Source Categories, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 63, including Subpart-A, General Provisions thereto, as amended in the *Federal Register* through [~~October 28, 2006~~] August 1, 2008, are hereby incorporated into 20.11.64 NMAC.

[1/1/2000; 20.11.64.12 NMAC - Rn, 20 NMAC 11.64.12, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.4.1 NMAC Sections 100, 101, 200, 300, 400, 401, 500, 501, 600, 601, 700, 800, 801, 900, 901, 1000, 1001, and 1002, adds new Sections 301, 701, 702, 902 and 1003, and renumbers sections. It includes revisions of 40 CFR 260 through 279 date of July 1, 2008, and adopts requirements for universal waste and used oil management. This amendment is effective 3/1/2009.

20.4.1.100 ADOPTION OF 40 CFR PART 260. Except as otherwise provided, the regulations of the United States environmental protection agency ("EPA") set forth in 40 CFR Part 260 through July 1, ~~2002~~ 2008 are hereby incorporated by reference. [20.4.1.100 NMAC - Rp, 20 NMAC 4.1.101, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.101 MODIFICATIONS, ~~AND~~ EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, ~~and~~ exceptions and omissions are made to the incorporated federal regulations.

A. The following terms defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth herein, in lieu of the meanings set forth in 40 CFR Sections 260.10 and 270.2:

(1) "administrator" or "regional administrator" means the secretary of the New Mexico environment department or his/her designee;

(2) "act" or "RCRA" (Resource Conservation and Recovery Act, as amended) means the New Mexico Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14 (as amended).

B. The following terms not defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth herein when the terms are used in this part:

(1) "appropriate act or regulation" means the New Mexico Hazardous Waste Act or 20.4.1 NMAC;

(2) "board" means the environmental improvement board;

(3) "CFR" means the Code of Federal Regulations;

(4) "department" means the New Mexico environment department;

(5) "environmental protection agency" or "EPA" shall be construed to mean the New Mexico environment department except when used in the phrases "EPA hazardous waste number," "EPA identification number," "EPA region," "EPA acknowledgment of consent," "EPA test

methods," and in the definitions set forth in 40 CFR Sections 260.10 and 270.2;

(6) "freedom of Information Act" or "FOIA" means NMSA 1978, Sections 14-2-1 through 14-2-12, 14-3A-1 through 14-3A-2, and 74-4-4.3D (as amended);

(7) "hazardous substance incident" means any emergency incident involving a chemical or chemicals, including but not limited to transportation wrecks, accidental spills or leaks, fires or explosions, which incident creates the reasonable probability of injury to human health or property;

(8) "secretary" means the secretary of the New Mexico environment department or his/her designee; and

(9) "Subtitle C of RCRA" means the New Mexico Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14 (as amended).

C. The following provisions of 40 CFR Part 260 are omitted from Section 20.4.1.100 NMAC:

(1) Section 260.1(b)(6);

(2) Section 260.20;

(3) Section 260.22;

(4) Section 260.30;

(5) Section 260.31;

(6) Section 260.32; ~~and~~

(7) Section 260.33[-]; ~~and~~

(8) Reference to 40 CFR Part 267.

D. Wherever there is any requirement in any of the federal regulations incorporated into this part to report an emergency situation, the requirement shall be construed to mean that the party required to report shall report the incident to the department via the New Mexico 24-hour emergency response number at (505) 827-9329 or such other number designated by the department.

[20.4.1.101 NMAC - Rp, 20 NMAC 4.1.102, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.200 ADOPTION OF 40 CFR PART 261. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 261 through July 1, ~~2002~~ 2008 are hereby incorporated by reference. [20.4.1.200 NMAC - Rp, 20 NMAC 4.1.200, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.300 ADOPTION OF 40 CFR PART 262. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 262 through July 1, ~~2002~~ 2008 are hereby incorporated by reference. ~~[The substitution of the following terms in Subparts E, F and H of 40 CFR Part 262 does not apply to Section 20.4.1.300 NMAC: "Administrator" and "Regional Administrator" for the term "Secretary" and "EPA" or "Environmental Protection Agency" for the term "Department."]~~

[20.4.1.300 NMAC - Rp, 20 NMAC 4.1.300, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.301 MODIFICATIONS, EXCEPTIONS AND OMISSIONS.

Except as otherwise provided, the following modifications, exceptions and modifications are made to the incorporated federal regulations. The substitution of the following terms in Subparts E, F and H of 40 CFR Part 262 does not apply to Section 20.4.1.300 NMAC: "administrator" and "regional administrator" for the term "secretary" and "EPA" or "environmental protection agency" for the term "department." [20.4.1.301 - 20.4.1.399 NMAC - Rp, 20 NMAC 4.1.301 - 4.1.399, 6/14/2000; 20.4.1.301 NMAC - N, 3/1/2009]

~~[20.4.1.301]~~ **20.4.1.302 - 20.4.1.399** [Reserved]

[20.4.302 NMAC - 20.4.1.399 NMAC - Rn, 20.4.1.301 - 20.4.1.399 NMAC, 3/1/2009]

20.4.1.400 ADOPTION OF 40 CFR PART 263. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 263 through July 1, ~~2002~~ 2008 are hereby incorporated by reference.

[20.4.1.400 NMAC - Rp, 20 NMAC 4.1.400, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.401 MODIFICATIONS, EXCEPTIONS AND OMISSIONS.

Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporate the federal regulations. The following provision of 40 CFR Part 263 is omitted from Section 20.4.1.400 NMAC: Section 263.20(e).

[20.4.1.401 NMAC - Rp, 20 NMAC 4.1.401, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.500 ADOPTION OF 40 CFR PART 264. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 264 through July 1, ~~2002~~ 2008 are hereby incorporated by reference.

~~[The substitution of "Secretary" for the term "Regional Administrator" in Section 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 264.12(a), as adopted in this section. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 264.12(a) to the Secretary at the time that notice is provided to the Regional Administrator. The substitution of "Department" for the term "EPA" does not apply to the second occurrence of the term "EPA" in 40 CFR Section 264.1082(c)(4)(ii).]~~

[20.4.1.500 NMAC - Rp, 20 NMAC 4.1.500, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.501 MODIFICATIONS, EXCEPTIONS AND OMISSIONS.

Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporate the federal regulations.

A. The following provisions of 40 CFR Part 264 are modified in 20.4.1.500 NMAC:

(1) the substitution of "secretary" for the term "regional administrator" in 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 264.12(a), as adopted in this section; the owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 264.12(a) to the secretary at the time that notice is provided to the regional administrator;

(2) the owner or operator proposing a class 1 permit modification pursuant to 40 CFR 264.15(b)(5) shall submit the request to the director as required in 40 CFR Sections 264.15(b)(5)(i) and 270.42(a);

(3) the owner and operator shall submit the reports in 40 CFR Section 264.100(g) on a semi-annual basis to the secretary;

(4) "qualified professional engineer" as provided for in 40 CFR Sections 264.115, 264.120, 264.143(i), 264.145(i), 264.147(e), 264.191(a), 264.191(b)(5)(ii), 264.192(a), 264.192(b), 264.193(i)(2), 264.196(f), 264.280(b), 264.554(c)(2), 264.571(a-c), 264.573(a)(4)(ii), 264.573(g), 264.574(a) and 264.1101(c)(2) shall mean an independent New Mexico licensed professional engineer in accordance with the New Mexico Engineering and Surveying Practice Act, NMSA 1978, Section 61-23-1 through 32 (as amended).

(5) the requirements of 40 CFR Section 264.73(b) shall be maintained in the operating record by the owner and operator at his facility until closure, except for 40 CFR Sections 264.73(b)(7) and 264.73(b)(9) which shall be kept in the operating record for no less than 3 years;

(6) the requirements of 40 CFR Section 264.347(d) shall be maintained in the operating record by the owner and operator at his facility until closure.

(7) the substitution of "department" for the term "EPA" does not apply to the second occurrence of the term "EPA" in 40 CFR Section 264.1082(c)(4)(ii).

B. The following provisions of 40 CFR Part 264 are omitted from Section 20.4.1.500 NMAC:

[A-] (1) Section 264.1(f);

[B-] (2) Section 264.149;

[C-] (3) Section 264.150;

[D-] (4) Section 264.301(1);

[E-] (5) Section 264.1030(d);

[F-] (6) Section 264.1050(g); and

[G-] (7) Sections 264.1080(e),

264.1080(f), 264.1080(g).

[20.4.1.501 NMAC - Rp, 20 NMAC 4.1.501, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.600 ADOPTION OF 40 CFR PART 265.

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 265 through July 1, [2002] 2008 are hereby incorporated by reference. [The substitution of "Secretary" for the term "Regional Administrator" in Section 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 265.12(a), as adopted in this section. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 264.12(a) to the Secretary at the time that notice is provided to the Regional Administrator. The substitution of "Department" for the term "EPA" does not apply to the second occurrence of the term "EPA" in 40 CFR Section 265.1083(c)(4)(ii).]

[20.4.1.600 NMAC - Rp, 20 NMAC 4.1.600, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.601 MODIFICATIONS, EXCEPTIONS AND OMISSIONS.

Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations:

A. The following provisions of 40 CFR Part 265 are modified in 20.4.1.600 NMAC:

(1) the substitution of "secretary" for the term "regional administrator" in 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 265.12(a), as adopted in this section. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 265.12(a) to the secretary at the time that notice is provided to the regional administrator;

(2) the owner and operator shall submit the reports in 40 CFR Section 264.100(g) on a semi-annual basis to the secretary;

(3) "qualified professional engineer" as provided for in 40 CFR Sections 265.115, 265.120, 265.143(h), 265.145(h), 265.147(e), 265.191(a), 265.191(b)(5)(ii), 265.192(a), 265.192(b), 265.193(i)(2), 264.196(f), 265.280(e), 265.441(a) through

(c), 265.443(a)(4)(ii), 265.443(g), 265.444(a) and 264.1101(c)(2) shall mean an independent New Mexico licensed professional engineer in accordance with the New Mexico Engineering and Surveying Practice Act, NMSA 1978, Section 61-23-1 through 32 (as amended);

(4) the requirements of 40 CFR 265.73(b) shall be maintained in the operating record by the owner and operator at his facility until closure;

(5) the requirements of 40 CFR Section 264.347(d) shall be maintained in the operating record by the owner and operator at his facility until closure.

(6) the substitution of "department" for the term "EPA" does not apply to the second occurrence of the term "EPA" in 40 CFR Section 265.1083(c)(4)(ii).

B. The following provisions of 40 CFR Part 265 are omitted from Section 20.4.1.600 NMAC:

[A-] (1) Section 265.1(c)(4);

[B-] (2) Section 265.149;

[C-] (3) Section 265.150;

[D-] (4) Section 265.1030(c);

[E-] (5) Section 265.1050(f); and

[F-] (6) Sections 265.1080(e), 265.1080(f), 265.1080(g).

[20.4.1.601 NMAC - Rp, 20 NMAC 4.1.601, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.700 ADOPTION OF 40 CFR PART 266.

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 266 through July 1, [2002] 2008 are hereby incorporated by reference. [20.4.1.700 NMAC - Rp, 20 NMAC 4.1.700, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.701 MODIFICATIONS, EXCEPTIONS AND OMISSIONS.

Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations. The provision of 40 CFR Section 266.102(e)(10) are modified in 20.4.1.700 NMAC and shall be maintained in the operating record by the owner and operator at his facility until closure.

[20.4.1.701 NMAC - N, 3/1/2009]

20.4.1.702 OMISSION OF 40 CFR PART 267.

The provisions of and any reference to 40 CFR Part 267 are omitted from these regulations.

[20.4.1.702 NMAC - N, 3/1/2009]

[20.4.1.701] 20.4.1.703 - 20.4.1.799

[Reserved]
[20.4.1.701 - 20.4.1.799 NMAC - Rp, 20 NMAC 4.1.701 - 4.1.799, 6/14/2000; 20.4.1.703 - 20.4.1.799 NMAC - Rn, 20.4.1.701 - 20.4.1.799 NMAC, 3/1/2009]

20.4.1.800 ADOPTION OF 40 CFR PART 268. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 268 through July 1, [2002] 2008 are hereby incorporated by reference. ~~[The substitution of "Department" for the term "EPA" in Section 20.4.1.101 NMAC does not apply to 40 CFR Section 268.1(c)(3), as adopted in this section.]~~ [20.4.1.800 NMAC - Rp, 20 NMAC 4.1.800, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.801 MODIFICATIONS, EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. The substitution of "department" for the term "EPA" in 20.4.1.101 NMAC does not apply to 40 CFR Section 268.1(c)(3), as adopted in this section.

B. The following provisions of 40 CFR Part 268 are omitted from Section 20.4.1.800 NMAC:

~~[A-]~~ (1) Section 268.5;

~~[B-]~~ (2) Section 268.6;

~~[C-]~~ (3) Section 268.42(b); and

~~[D-]~~ (4) Section 268.44(a)

through 264.44(g).

[20.4.1.801 NMAC - Rp, 20 NMAC 4.1.801, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.900 ADOPTION OF 40 CFR PART 270. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 270 through July 1, [2002] 2008 are hereby incorporated by reference. ~~[The substitution of the terms "EPA," "Regional Administrator" and "Administrator" in Section 20.4.1.101 NMAC does not apply to 40 CFR Sections 270.5, 270.10(f)(2)&(3), 270.10 (g)(1)(i), 270.11 (a) (3), 270.32(e), 270.72(a)(5), and 270.72(b)(5), as adopted in this section.]~~ [20.4.1.900 NMAC - Rp, 20 NMAC 4.1.900, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.901 PERMITTING PROCEDURES

A. Permit Issuance or Denial.

(1) Once an application is determined to be administratively and technically complete, the secretary shall prepare and issue either a draft permit or a notice of intent to deny.

(a) A draft permit shall contain all conditions, compliance schedules, monitoring requirements and technical standards for treatment, storage, and/or disposal provided for in 40 CFR Part 270.

(b) A notice of intent to deny shall

state the secretary's reasons for the intended denial.

(2) Any draft permit or notice of intent to deny prepared by the department under Paragraph (1) of this subsection shall be accompanied by a fact sheet and shall be based on the administrative file. Copies of the fact sheet shall be sent to the applicant; to any state or federal agency, as applicable; and, upon request, to any other person.

(3) The secretary shall give public notice that a draft permit or a notice of intent to deny has been prepared, and shall allow forty-five (45) days for review and public comment, including requests for public hearing.

(4) If the secretary issues a draft permit, and a timely written notice of opposition to the draft permit and a request for a public hearing is received, the department, acting in conjunction with the applicant, will respond to the request in an attempt to resolve the issues giving rise to the opposition. If such issues are resolved to the satisfaction of the opponent, the opponent may withdraw the request for a public hearing.

(5) No ruling shall be made on permit issuance or denial without an opportunity for a public hearing, at which all interested persons shall be given a reasonable chance to submit significant data, views or arguments orally or in writing and to examine witnesses testifying at the public hearing. A public hearing shall be scheduled if:

(a) the secretary issues a notice of intent to deny, and a timely request for public hearing is received from the applicant;

(b) the secretary issues a draft permit, a timely request for public hearing is received from any person opposed to the granting of a permit, and such person does not subsequently withdraw the request pursuant to Paragraph (4) of this subsection; or

(c) the secretary determines, no later than five (5) days following the end of the comment period specified in Paragraph (4) of this subsection, that a public hearing should be held notwithstanding the absence of a timely request for public hearing.

(6) The comment period specified in Paragraph (3) of this subsection shall automatically be extended to the close of any public hearing.

(7) The secretary shall give due consideration and the weight he/she deems appropriate to all comments received during a public comment period and to all relevant facts and circumstances presented at a public hearing.

(8) When ruling on permit issuance or denial, the secretary may disapprove in whole or in part, or make reasonable conditions to any permit, if it appears that the permit applied for will not meet the requirements of these regulations.

(9) At the time that any final per-

mit decision is issued, the secretary shall issue a response to comments. This response shall:

(a) specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change;

(b) briefly describe and respond to all comments on the draft permit or the permit application raised during the public comment period, or during any hearing, and

(c) be available to the public.

(10) A final permit decision shall become effective thirty (30) days after notice of the decision has been served on the applicant, or such later time as the secretary may specify. This provision shall not be construed to extend the time for appeal of a permit decision as provided by the Hazardous Waste Act.

(11) The approval of a permit does not relieve any person from the responsibility of complying with applicable state or federal laws and regulations.

(12) The secretary shall notify the applicant by certified mail of any impending permit action and of any scheduled public hearing date.

B. Permit Modifications, Suspension and Revocation.

(1) The secretary may modify, suspend, or revoke a permit issued pursuant to Subsection A of this section for cause set forth in 40 CFR Part 270 and the act.

(2) The secretary may modify, suspend, revoke any permit upon his/her initiative, or if, after the department's investigation of the facts and circumstances, pursuant to the request of any interested person, such permit action is deemed warranted.

(3) Requests for permit modification, suspension, revocation shall be in writing and shall contain facts or reasons supporting the request.

(4) If the secretary decides that the request is not justified, the permittee will be notified in writing explaining the reason for denial. Denial of request of modification, revocation, and reissuance, or termination are not subject to public notice, comment, or hearings.

(5) If the secretary decides to modify or revoke and reissue a permit under 40 CFR section 270.41 or 40 CFR section 270.42(c), considered a major modification under the act, a draft permit shall be prepared incorporating the proposed changes. The secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit the secretary shall require the submission of a new application.

(6) Class 1 and 2 modifications under 40 CFR 270.42(a) and (b) shall be

considered minor permit modifications under the act.

~~(6)~~ (7) In a permit modification under this section, only those conditions to be modified shall be reopened. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and were being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

~~(7)~~ (8) If the secretary decides to terminate a permit under 40 CFR section 270.43, a notice of intent to terminate shall be issued. The secretary shall follow the applicable procedures as required for a draft permit under Section 20.4.1.901 NMAC.

C. Public Notices.

(1) Pre-application public meeting and notice. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR Section 124.31 through July 1, ~~2002~~ 2008 is hereby incorporated by reference.

(2) Public notice requirements at the application stage. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR section 124.32 through July 1, ~~2002~~ 2008 is hereby incorporated by reference.

(3) Public notice of issuance of a draft permit or a notice of intent to deny, and of any public hearing scheduled, shall be given by publication of a notice in a newspaper of general circulation in the area affected, broadcasts over local radio stations and by mailing a copy of the notice to the permit applicant, those individuals on the department mailing list of persons interested in hazardous waste permit actions, and to any unit of local, state and federal government as may be applicable.

(4) All public notices issued shall contain the following minimum information:

(a) the subject, the time and place of any scheduled hearing and the manner in which interested persons may present their views;

(b) a brief description of the procedures by which requests for hearings may be made, unless already scheduled;

(c) the name and address of the office processing the permit action for which notice is being given;

(d) the name and address of the permittee or permit applicant, and, if different, of the facility or activity regulated by the permit;

(e) a brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(f) the name, address and telephone number of a person from whom interested persons may obtain further information;

(g) in addition, public notice of a scheduled public hearing shall also contain references to the dates of previous public notices relating to the permit;

(h) the notice shall state where interested persons may secure copies of any proposed draft permit or notice of intent to deny.

D. Fact Sheet.

(1) A fact sheet shall be prepared for every draft permit for a hazardous waste management facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit.

(2) The fact sheet shall include, when applicable:

(a) a brief description of the type of facility or activity which is the subject of the draft permit;

(b) the type and quantity of wastes which are proposed to be or are being treated, stored, disposed, injected, emitted, or discharged;

(c) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) reasons why any request for variance or alternative to require standards do or do not appear justified;

(e) a description of the procedures for reaching a final decision on the draft permit including:

(i) the beginning and ending dates of the comment period and the address where comments will be received;

(ii) procedures for requesting a hearing and the nature of that hearing; and

(iii) any other procedures by which the public may participate in the final decision;

(iv) name and telephone number of a person to contact for additional information.

(3) The fact sheet shall be available at the time the public notice is published.

E. Information repository.

Except as otherwise provided, the regulation of the EPA set forth in 40 CFR section 124.33 through July 1, ~~2002~~ 2008 is hereby incorporated by reference.

F. Hearings.

(1) Public notice of any public hearing shall be given at least thirty (30) days prior to the scheduled date of the hearing and shall state the subject.

(2) Hearings shall be held in Santa Fe or within any area of the state sub-

stantially affected by the proceedings as specified by the secretary.

(3) The secretary may designate a hearing officer to take evidence at the hearing.

(4) All hearings shall be recorded by a certified court reporter. A transcript will be furnished to all persons for review at the department's main office. Costs of a copy of a transcript will be borne by those requesting such copies.

(5) In hearings, the rules of civil procedure and the technical rules of evidence shall not apply, but the hearings shall be conducted so that all relevant views, arguments, and testimony are amply and fairly received without undue repetition.

(a) Testimony for hearings on permit issuance or modification shall be presented in the following order:

(i) testimony by the applicant (such testimony is a prerequisite to the granting of the requested permit or modification);

(ii) testimony by other persons (except the department) supporting issuance or modification of the permit, in any reasonable order;

(iii) testimony by persons (except the department) opposed to issuance or modification of the permit, in any reasonable order;

(iv) testimony by the department; and

(v) rebuttal testimony, as appropriate.

(b) Testimony for hearings on permit suspension or revocation shall be as follows:

(i) testimony by the department;

(ii) testimony by other persons supporting suspension or revocation of the permit, in any reasonable order;

(iii) testimony by the permittee;

(iv) testimony by other persons opposed to suspension or revocation of the permit, in any reasonable order; and

(v) rebuttal testimony, as appropriate.

(c) In all hearings, cross examination of each witness shall be conducted by interested persons, in any reasonable order, immediately after that witness has testified.

(7) The burden of proof at hearings shall be as follows:

(a) for hearings on permit issuance or modifications, the burden of proof shall be on the applicant or permittee;

(b) for hearings on permit suspension or revocation, the burden of proof shall be on the department.

G. Secretary's Decision.

(1) Any person heard or repre-

mented at the hearing shall be given written notice of the action of the secretary.

(2) The secretary shall notify the applicant or permittee of his/her decision and the reasons therefore by certified mail.

H. Appeals. Appeals of the secretary's decision shall be as provided by the Hazardous Waste Act.

(1) The filing of an appeal does not act as a stay of any action required by the secretary's decision.

(2) The record on appeal shall include the transcript of the hearing, all related correspondence, any responses to comments, and all other information relied upon by the secretary in deciding upon the permit action.

[20.4.1.901 NMAC - Rp, 20 NMAC 4.1.901, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.902 MODIFICATIONS, EXCEPTIONS AND OMISSIONS.

Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. "Qualified professional engineer" as provided for in 40 CFR Sections 270.14(a), 270.16(a), and 270.26(c)(15) shall mean an independent New Mexico licensed professional engineer. A professional engineer shall abide by all requirements of the New Mexico Engineering and Surveying Practice Act, NMSA 1978, Section 61-23-1 through 32 (as amended) and applicable regulations.

B. The substitution of the terms "EPA," "regional administrator" and "administrator" in 20.4.1.101 NMAC does not apply to 40 CFR Sections 270.5, 270.10(f)(2)&(3), 270.10 (g)(1)(i), 270.11 (a) (3), 270.32(c), 270.72(a)(5), and 270.72(b)(5), as adopted in this section.

C. The following provisions of 40 CFR Part 270 are omitted from 20.4.1.900 NMAC:

(1) statement in Section 270.1(b), "treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subpart J of this part.";

(2) Sections 270.1(b)(1) and 270.1(b)(2);

(3) "and standardized permit (subpart J of this part)" in the definition of "permit" in Section 270.2;

(4) definition of "standardized permit" in Section 270.2;

(5) Section 270.10(a)(6);

(6) Section 270.10(h)(2);

(7) portion of the first sentence stating "or as a routine change with prior approval under 40 CFR 124.213" of Section 270.40(b);

(8) Section 270.41 referencing 270.320 and 40 CFR part 124, subpart G;

(9) Section 270.41(b)(3);

(10) Section 270.51(e); and

(11) Section 270, subpart J.

[20.4.1.902 NMAC - N, 3/1/2009]

~~20.4.1.902~~ 20.4.1.903 - 20.4.1.999

[Reserved]
[20.4.1.902 -20.4.1.999 NMAC - Rp, 20 NMAC 4.1.902 - 4.1.999, 6/14/2000; 20.4.1.903 - 20.4.1.999 NMAC - Rn, 20.4.1.902 - 20.4.1.999 NMAC, 3/1/2009]

20.4.1.1000 ADOPTION OF 40

CFR PART 273. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 273 through July 1, [2002] 2008 are hereby incorporated by reference. [20.4.1.1000 NMAC - Rp, 20 NMAC 4.1.1000, 6/14/2000; A, 10/01/2003; A, 3/1/2009]

20.4.1.1001 MODIFICATIONS, ~~AND~~ EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. The following terms have the meanings set forth herein.

(1) "Aerosol can" means a container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.

(2) [~~The term~~] "Regional administrator" and "EPA" as used in 40 CFR sections 273.12 and 273.32 shall mean, as applicable to [~~generators~~] handlers of universal waste pesticides under this part, notification to the secretary of the New Mexico department of agriculture.

(3) "Universal waste" means, in addition to the hazardous wastes listed in 40 CFR Section 273.9, aerosol cans as described in this subsection.

B. Alternative universal waste labeling. As an alternative to the labeling requirements for universal waste in 40 CFR sections 273.14 and 273.34, universal waste handlers may use other words that accurately identify the universal waste material, for example, "spent bulbs" or "batteries for recycling." Note that the labeling must be either on the individual piece of universal waste, on the container in which the universal waste is stored, or on a pallet of banded or otherwise bound universal waste being readied for shipment.

C. Breaking and crushing universal waste lamps. In addition to the requirements for universal waste lamps contained in Subparts B and C of 40 CFR Part 273, the following requirements shall apply.

(1) A handler of universal waste may intentionally break or crush lamps to

reduce their volume to facilitate management or transport to destination facilities. However, breaking and crushing of lamps and subsequent management of the resulting waste must occur in a safe and controlled manner that minimizes the release of hazardous constituents to the workplace and the environment, and steps must be taken to minimize exposures of children, pregnant women, and other sensitive individuals to mercury releases from these activities. Universal waste destination facilities as defined in 40 CFR Section 273.9 may not intentionally break or crush lamps under this subsection.

(2) A handler of universal waste who intentionally breaks or crushes mercury-containing universal waste lamps under this subsection shall comply with the following provisions.

(a) Use a mechanical unit specifically designed for the process that results in the breaking or crushing operation to take place in a container or while the lamps are being added to the container, for example, a drum-top lamp crusher. The unit must also incorporate air pollution controls that capture both particulate and vapor phase mercury. At a minimum, these controls must include, or must be equivalent to, the protection provided by a high efficiency particulate air (HEPA) filter, activated charcoal, and a negative air flow (vacuum) through the unit. The unit must have documentation from the manufacturer that demonstrates that the unit is capable of achieving the occupational safety and health administration (OSHA) permissible exposure limit for mercury.

(b) Develop and implement a written procedure specifying how to safely break or crush universal waste lamps. This procedure must include: type of equipment to be used to break or crush the lamps, operation and maintenance of the unit in accordance with written procedures developed by the manufacturer of the equipment, safe work practices, decontamination and spill response practices, and proper waste management practices. The handler must document maintenance activities and keep records of maintenance. In addition, the unit operator(s) and assistant(s) must receive training applicable to their duties relating to breaking and crushing operations, waste handling, area and equipment decontamination, spill response, and emergency procedures; this training must be documented.

(c) Ensure that the area in which the lamps are broken or crushed is well ventilated and monitored to ensure compliance with applicable OSHA permissible exposure levels for mercury.

(d) Ensure that spills of the contents of the universal waste lamps that may occur during breaking or crushing opera-

tions are cleaned up in accordance with 40 CFR sections 273.13 or 273.33. A spill clean-up kit must be readily available to immediately clean up spills or leaks of the contents of the universal waste lamps which may occur during lamp breaking or crushing operations.

(e) Store the broken and crushed lamps and other solid waste generated as part of the breaking or crushing operation that are being reclaimed for mercury in closed, non-leaking containers that are in good condition. Transfer of the broken or crushed lamps to other containers is not permitted unless the area is well ventilated and monitored to ensure compliance with applicable OSHA permissible exposure levels for mercury.

(f) Label drums or containers used for storage of broken or crushed lamps and other solid waste generated as part of the breaking or crushing operation that are being reclaimed for mercury with the words "universal waste-lamps," "waste lamps," "used lamps," or other words that accurately identify the contents, for example, "crushed bulbs."

(g) Manage residues, filter media, or other solid waste generated as part of the breaking or crushing operation that are not being reclaimed and that exhibit any characteristics of a hazardous waste identified in Subpart C of 40 CFR Part 261 in accordance with all applicable requirements of this part.

(3) The owner or operator of a unit that breaks or crushes mercury-containing universal waste lamps must notify the department's hazardous waste bureau of its intent to operate the unit. The notification shall include the owner and operator name(s), address(es), and phone number(s); manufacturer's documentation describing the unit; documentation that demonstrates that the unit is capable of achieving the occupational safety and health administration (OSHA) permissible exposure limit for mercury; and a description of how and where the unit will be operated.

(a) For units in operation before the requirements in this subsection became effective, the owner or operator must submit such notification within 90 days of the effective date of this requirement.

(b) For units not in operation before the effective date of the requirements in this subsection, the owner or operator must submit such notification before operating the unit.

D. Universal waste aerosol cans. In addition to the requirements for universal waste contained in 40 CFR Part 273, the following requirements shall apply.

(1) Applicability. The requirements of this part apply to persons managing aerosol cans as described in Subsection

A of this section, except persons managing the following aerosol cans.

(a) Aerosol cans that are not yet wastes under this part, including those that do not meet the criteria for waste generation in Subparagraph (c) of Paragraph (2) of this subsection.

(b) Aerosol cans that are not hazardous waste. An aerosol can must be managed as a hazardous waste if its contents exhibit one or more of the characteristics identified in Subpart C of 40 CFR Part 261 or if its contents are listed in Subpart D of 40 CFR Part 261.

(c) Generation of waste aerosol cans. An aerosol can becomes a waste on the date it is discarded or is no longer useable. For purposes of this part, an aerosol can is considered to be no longer useable when the can is as empty as proper work practices allow, the spray mechanism no longer operates as designed, the propellant is spent, or the product is no longer used. An unused aerosol can becomes a waste on the date the handler decides to discard it. This section does not apply to aerosol cans, including punctured aerosol cans, that are empty as defined in 40 CFR 261.7(b).

(2) Waste management. A handler of universal waste must manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste to the environment as follows.

(a) A handler of universal waste must immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container must be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(b) A handler of universal waste may accumulate universal waste aerosol cans in an accumulation container provided it is clearly marked for such use. The accumulation container must be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans must be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.

(3) Puncturing universal waste aerosol cans. A handler of universal waste may puncture aerosol cans containing hazardous waste under this part to remove and collect the contents of the aerosol cans pro-

vided the handler complies with the following provisions.

(a) Ensure that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste to the environment.

(b) Ensure that the puncturing operations are performed safely by developing and implementing a written procedure detailing how to safely puncture aerosol cans. This procedure must include the type of equipment to be used to puncture the aerosol cans, operation and maintenance of the unit, safe work practices, and proper waste management practices.

(c) Ensure that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the aerosol can which may occur during the can-puncturing operation.

(d) Immediately transfers the contents of the aerosol can, or puncturing device if applicable, to a container that meets the requirements of 40 CFR Section 262.34.

(e) Ensure that the area in which the aerosol cans are punctured is well ventilated.

(f) Ensure that employees are thoroughly familiar with the procedure for sorting and puncturing aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

(g) Determine whether the contents of the aerosol can, residues, and other solid wastes generated from the aerosol can puncturing activities are a hazardous waste identified in this part.

(h) Manage the contents of the universal waste aerosol can, residues, and other solid waste generated from the aerosol can puncturing activities in accordance with all applicable hazardous waste management requirements if they exhibit one or more of the characteristics identified in Subpart C of 40 CFR Part 261 or if its contents are listed in Subpart D of 40 CFR Part 261. The handler is considered the generator of the contents of the universal waste aerosol can and other solid waste generated from the aerosol can puncturing activities. If the contents of the universal waste aerosol can, residues, or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.

(4) Labeling or marking. Each universal waste aerosol can, or each container in which universal waste aerosol cans are contained or accumulated, must be labeled or marked clearly with any one of the following phrases: "universal waste-aerosol can(s)", "waste aerosol can(s)," or

other words that accurately identify the contents, for example, "spent aerosol can(s)." [20.4.1.1001 NMAC - Rp, 20 NMAC 4.1.1001, 6/14/2000; A, 3/1/2009]

20.4.1.1002 ADOPTION OF 40 CFR PART 279. Except as otherwise provided, the regulations of the United States environmental protection agency set forth in 40 CFR Part 279 through July 1, [2002] 2008 are hereby incorporated by reference. [20.4.1.1002 NMAC - N, 10/01/2003; A, 3/1/2009]

20.4.1.1003 MODIFICATIONS, EXCEPTIONS AND OMISSIONS. Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. Alternative used oil labeling for generators. As an alternative to the labeling requirements for containers and aboveground tanks used to store used oil in 40 CFR Section 279.22, used oil generators may use other words that accurately identify the used oil, for example, "waste oil" or "oil for recycling."

B. Used oil storage.

(1) In addition to the requirements for used oil storage in 40 CFR Section 279.22, containers and aboveground tanks used to store used oil outdoors must be closed, except when it is necessary to add or remove used oil.

(2) With the exception of the response to releases requirements in 40 CFR 279.22(d), this section does not apply to used oil storage containers used temporarily in the normal course of maintenance and service activities where these containers are emptied at the end of each work day or shift.

[20.4.1.1003 NMAC - N, 3/1/2009]

[20.4.1.1003] 20.4.1.1004 - 20.4.1.1099 [Reserved]

[20.4.1.1002 - 20.4.1.1099 - Rp, 20 NMAC 4.1.1002 - 4.1.1100, 6/14/2000; A, 10/01/2003; 20.4.1.1004 - 20.4.1.1099 NMAC - Rn, 20.4.1.1003 - 20.4.1.1099 NMAC, 3/1/2009]

**NEW MEXICO
DEPARTMENT OF HEALTH
PUBLIC HEALTH DIVISION**

**TITLE 6 PRIMARY AND
SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL
ADMINISTRATION - HEALTH AND
SAFETY
PART 8 DIABETES SELF-
MANAGEMENT BY STUDENTS IN
THE SCHOOL SETTING**

6.12.8.1 ISSUING AGENCY: New Mexico Department of Health. [6.12.8.1 NMAC - N, 02/01/2009]

6.12.8.2 SCOPE: This rule applies to students enrolled in public, private, home or parochial schools in New Mexico unless otherwise expressly limited. [6.12.8.2 NMAC - N, 02/01/2009]

6.12.8.3 STATUTORY AUTHORITY: This rule is adopted pursuant to the Department of Health Act, Section 9-7-6(E) and the Public Health Act, Sections 24-1-3(B), 24-1-3(G), and 24-1-3(O) NMSA 1978. [6.12.8.3 NMAC - N, 02/01/2009]

6.12.8.4 DURATION: Permanent. [6.12.8.4 NMAC - N, 02/01/2009]

6.12.8.5 EFFECTIVE DATE: February 1, 2009 unless a later date is cited in the history at the end of a section. [6.12.8.5 NMAC - N, 02/01/2009]

6.12.8.6 OBJECTIVE: The purpose of this rule is to grant students who are authorized pursuant to this rule the right to self-manage their diabetes care in the school setting and to develop mechanisms that support safe diabetes self-management in the school environment. [6.12.8.6 NMAC - N, 02/01/2009]

6.12.8.7 DEFINITIONS:

A. "Developmental level" means the appropriate age-specific stage of emotional, mental and physical growth as determined by the school nurse or other designated registered nurse or clinician.

B. "Equipment and supplies" means those materials required to store or dispose of sharps, to perform self-assessment procedures, or to self-administer medication.

C. "Health care practitioner" means a person authorized under law in New Mexico to prescribe drugs for the treatment of diabetes and associated medical conditions.

D. "Individualized health-care plan" means a written plan that identifies the student's health care needs and is developed by the school nurse or designated registered nurse or clinician cooperatively with the student and parent or guardian based on the orders provided by the student's health care practitioner.

E. "Medication" means a drug as that term is defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and includes oral and non-oral drugs in a pharmacy-labeled container.

F. "Other designated reg-

istered nurse or clinician" means a registered nurse or clinician designated by the school district to act in the capacity of a school nurse.

G. "School nurse" means a registered nurse (RN), clinical nurse specialist (CNS) or certified nurse practitioner (CNP) licensed by the New Mexico public education department to provide nursing services in the school setting.

H. "Self-administration" means a student's own use of prescribed diabetes medication pursuant to a prescription from a health care practitioner.

I. "Self-assessment" means a student's monitoring of his/her blood glucose levels and for the presence of ketones.

J. "Sharps" means a device with a keen edge or sharp point used to puncture the skin for the purpose of self-assessment or a needle used to inject medication.

[6.12.8.7 NMAC - N, 02/01/2009]

6.12.8.8 REQUIREMENTS:

A. General rights: Schools (whether public or nonpublic) are required to grant to any student in grades kindergarten through 12 authorization to carry and use equipment and supplies, for storage and disposal of sharps, for self-assessment and for self-administration of diabetes treatment medications prescribed by a health care practitioner if all of the following conditions are met.

(1) A health care practitioner has prescribed the medication, directed the instruction of the student in the correct and responsible use of the medication, and approved the student's ability to perform self-assessment and medication self-administration, pursuant to Subsection B of 6.12.8.8 NMAC.

(2) The student has demonstrated to the school nurse or other designated registered nurse or clinician the skill level and developmental level necessary to correctly store and use any equipment and supplies required to perform self-assessment and self-administration of such medication as prescribed by the health care practitioner (or the practitioner's designee).

(3) The school nurse or other designated registered nurse or clinician, with input from the parent or guardian and based on the student's health care practitioner's medical orders, has formulated a written individualized healthcare plan for management of diabetes care for the student that includes but is not limited to the correct storage and disposal of sharps by the student, the performance of self-assessment procedures and the self-administration of medication.

(4) The school has informed the parent or guardian of the student in writing

that the school, including its employees and agents, is to incur no liability as a result of any injury arising from the performance of self-assessment procedures and the self-administration of medication nor from any injury arising from the student carrying and disposing of equipment and supplies to perform these procedures.

(5) The student's parent or guardian has completed and submitted to the school:

(a) all written documentation required by school policy; and

(b) the required treatment plan/medical orders; and

(c) a signed statement from the parent or guardian of the student acknowledging that the school, including its employees and agents, is to incur no liability as a result of any injury arising from the performance of self-assessment procedures and the self-administration of medication nor from any injury arising from the student carrying and disposing of equipment and supplies to perform these procedures, and the parent or guardian will indemnify and hold harmless the school, including its employees and agents, against any claim arising out of the performance of these procedures or storing and disposing of equipment and supplies to perform them.

B. Terms and limits of the student's rights: A student granted authorization under Subsection A of 6.12.8.8 NMAC shall:

(1) retain these rights not to exceed the duration of the current school year, but may lose these rights if, as determined by the school nurse and the school administrator, endangerment to the student's person or other persons occurs through the misuse of equipment, supplies, or medication or if the student's self-administration of medication is inconsistent with the prescribed dosage; and

(2) be responsible for storing and disposing of all sharps as agreed upon with the school nurse or other designated registered nurse or clinician; and

(3) be allowed to possess equipment and to perform routine self-assessment and self-treatment at locations identified in Subsection C of 6.12.8.8 NMAC but away from major traffic pathways as agreed upon with the school nurse or other designated registered nurse or clinician.

C. Extent of authorization: An authorization granted under Subsection A of 6.12.8.8 NMAC must allow the student granted authorization to store and dispose of equipment and supplies necessary for self-treatment and self-assessment in the school setting including:

(1) while at any location on school property, including the classroom, but away from major traffic pathways as

agreed upon with the school nurse or other designated registered nurse or clinician;

(2) while at a school-sponsored activity;

(3) during regular before-school and after-school activities; and

(4) in transit to or from school or school-sponsored activities.

D. Duration of authorization: An authorization granted under Subsection A of 6.12.8.8 NMAC is effective only for the duration of the school year for which it is granted and must be renewed each subsequent school year in accordance with this subsection. It may be revoked at any time for failure to comply with Subsection B of 6.12.8.8 NMAC.

E. Back-up medication: The school must ensure that in the event of a diabetes emergency any back-up medication and equipment and supplies provided by the parent or guardian are kept at an easily accessible location agreed upon by the student and authorized individuals. The school must develop policies and procedures to address the safekeeping of these materials. Authorized school personnel who in case of an emergency and in good faith provide a person with back-up medication, equipment, or supplies are to incur no liability as a result of providing the materials and medication to an authorized student or individual.

F. Maintenance of information: Information described in Paragraphs (3) and (5) of Subsection A of 6.12.8.8 NMAC shall be kept on file at the student's school of enrollment in a location easily accessible by authorized individuals who have a legitimate need to know. Each school district must have in place policies and procedures that are in compliance with the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and Health Insurance Portability and Accountability Act of 1996 (HIPAA) to address the safekeeping and confidentiality of the described information.

[6.12.8.8 NMAC - N, 02/01/2009]

HISTORY of 6.12.8 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to 8.106.110 NMAC, Section 14, effective 01/30/2009.

8.106.110.14 APPROVAL EFFECTIVE DATE: Beginning with applications dated [July 1, 2004] February 1, 2009, or later, general assistance benefits for an

approved application shall be effective [~~as of the date of application. Payment in the first month shall be prorated from the date of application.~~] the date of approval or from the 30th day after the day of application, whichever is earlier. Payment in the initial month shall be prorated from the date of authorization.

[8.106.110.14 NMAC - N, 07/01/2004, A/E, 01/30/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to 8.106.120 NMAC, Section 9, effective 01/30/2009.

8.106.120.9 CERTIFICATION PERIODS:

A. Certification period: Cash assistance shall be approved for a fixed certification period at the end of which the assistance shall be terminated.

B. Assigning the certification period:

(1) GA-time-limited disability: The certification period for a individual with a verified time-limited disability shall:

(a) be set for the length of the disability established by medical documentation at the time of approval;

(b) be assigned for a fixed period beginning the first month of [application] approval, not to exceed six months; and

(c) be terminated at the end of the initial certification unless;

(i) the recipient submits a recertification application, and

(ii) the recipient meets the financial eligibility requirements, and

(iii) the IRU re-determines eligibility due to disability prior to the end of the certification period.

~~**(2) GA temporary disability:** The certification period for a temporary disability depends on the type and length of disability established by medical documentation, and shall be assigned for a fixed period of six months, beginning the month of application. A temporary disability with a duration of six months or longer shall be reviewed and verified by the IRU prior to extending the certification period beyond six months.~~

~~**(3) GA permanent disability:** The certification period for a permanent disability shall be twelve months, beginning in the month of application. A permanent disability with a duration of 12 months or longer shall be reviewed and verified by the IRU prior to extending the certification period beyond the first six months.~~

(2) GA-disability: The certifica-

tion period for an individual with a verified disability shall begin in the first month of approval and be assigned for a fixed period of time.

~~(4)~~ **(3) GA-unrelated dependent child:** The certification period begins in the first month of application and cannot exceed six months.

~~(5)~~ **(4) Shelter home care:** Adults receiving a state supplement payment for SSI recipients in an ARCSH setting shall be certified for twelve months, beginning in the month of application.

[8.106.120.9 NMAC - N, 07/01/2004; A, 03/16/2005, A/E, 01/30/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to 8.106.610 NMAC, Section 8, effective 01/30/2009.

8.106.610.8 CASH ASSISTANCE ISSUANCE:

A. Method of payment:

Cash assistance benefits are paid by deposit of funds into an electronic benefit transfer (EBT) account.

(1) The initial month's cash assistance payment is posted to the benefit group's EBT account on the first working day after the date of authorization.

(2) Cash assistance payments are issued into the recipient's EBT account so that the funds are available to the benefit group on the first working day of the month.

B. Benefit issuance:

EBT account cards shall be issued at time of application to the authorized payee or authorized representative.

C. Replacement card:

The caseworker, the HSD help desk or the contractor customer service help desk shall have a card deactivated upon request of an adult participant in the benefit group or authorized payee. The card will be deactivated immediately and a replacement card provided to the participant. Once a card is deactivated it cannot be reactivated for any reason.

D. Authorizing payments:

(1) Cash benefit payments are authorized, changed or terminated through the department's automated eligibility system.

(2) An initial month's cash assistance payment that is issued by warrant is sent by mail on the first working day after the date of authorization.

E. Initiation of payment:

~~(4) The initial month's GA cash assistance payment is prorated from the date of application.~~

~~(2) A benefit group may be eligible for payment in the application month, but is not eligible for the month following the month of application.]~~

~~(1) Payment is initiated and prorated from the date of authorization or from the 30th day after the day of application, whichever is earlier.~~

~~(2) If the case was eligible in a month prior to the month of approval, but is not eligible for payment in the month following the month of disposition, the benefit group is not eligible for payment in any of these months.~~

~~(3) Payments effective in the current month:~~ A payment that is issued during the month is deposited into the EBT account no later than the business day after payment is approved.

~~(4) Payments effective in the ongoing month:~~

~~(a) When authorized, the payment amount remains the same from month to month until changed.~~

~~(b) EBT issuances are transmitted to the fiscal agent so that the funds are available on the first working day of the month. Payments authorized after the monthly transmission to the fiscal agent are issued as part of the next nightly benefit batch.~~

F. Ongoing monthly issuance:

Ongoing cash assistance payments are authorized in the regular monthly issuance process.

(1) The payment amount remains the same from month to month in the certification period, unless changes are made that affect eligibility or benefit amount.

(2) **Warrants:** During the monthly issuance process, if necessary, hard copy checks are written the night before the third to the last working day of the month. They are mailed so as to arrive on or about the first mail delivery day of the month.

G. Change in amount of payment:

(1) After approval, there is a continuing responsibility on the part of both the benefit group and the caseworker to make sure that eligibility and benefit amount are correctly determined. Failure on either side to recognize and carry out this responsibility can result in overpayment to the benefit group. Overpayments for any reason are charged to the benefit group and must be repaid to the department.

(2) A benefit group's cash assistance payment shall be increased or decreased after receipt and verification of information indicating that changes in a benefit group's circumstances affect the amount of assistance to which the benefit group is entitled.

(3) Changes in the payment amount shall be made in accordance with changes in program policy.

H. Affecting changes:

(1) A change in the benefit group's circumstances may change the cash assistance amount for which the group is eligible.

(2) The cash assistance payment reduction or termination of benefits shall be effective in the month following the month the notice of adverse action expires.

(3) The cash assistance payment will be reduced in the month following issuance of a notification of change in circumstances, when the benefit group reports a change in writing, an adult has signed the written report, and the caseworker has sufficient information to effect the change in benefit amount.

(4) If a change in benefit amount occurs as a result of an untimely report by the benefit group, an overpayment or underpayment may occur. If an underpayment occurs, it shall be corrected by issuing a supplemental payment effective the month following the month the change is verified. In case of an overpayment, an overpayment claim shall be established for all appropriate months and efforts shall be made to recover the overpayment from the benefit group.

I. Whereabouts

unknown: Eligibility shall be terminated if the whereabouts of the benefit group are unknown to the department. A benefit group's whereabouts shall be considered to be unknown if:

(1) mail sent to the last known address is returned to the department indicating that the benefit group no longer lives at that address and at least 30 days have passed since the caseworker sent the mail;

(2) warrants for two consecutive months are returned to the HSD accounting section of the administrative services division; or

(3) the benefit group does not make any withdrawals from the benefit group's EBT account for 60 days or more. [8.106.610.8 NMAC - N, 07/01/2004; A, 02/28/2007, A/E, 01/30/2009]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 19 PUBLIC SCHOOL ACCOUNTABILITY PART 7 HIGH SCHOOL READINESS ASSESSMENT SYSTEM FOR CAREER AND COLLEGE

6.19.7.1 ISSUING AGENCY: Public Education Department [6.19.7.1 NMAC - N, 1/30/09]

6.19.7.2 SCOPE: This rule

shall apply to public schools, state educational institutions except for institutions of higher education and the New Mexico military institute, and state agencies enrolling high school students.

[6.19.7.2 NMAC - N, 1/30/09]

6.19.7.3 STATUTORY

AUTHORITY: Sections 22-2-1, 22-2-2, 22-2C-4.1, and 22-13-1.1, NMSA 1978.

[6.19.7.3 NMAC - N, 1/30/09]

6.19.7.4 DURATION:

Permanent

[6.19.7.4 NMAC - N, 1/30/09]

6.19.7.5 EFFECTIVE DATE:

January 30, 2009 unless a later date is cited at the end of a section.

[6.19.7.5 NMAC - N, 1/30/09]

6.19.7.6 OBJECTIVE:

The objective of this rule is to establish procedures for implementing the high school readiness assessment system, including: (a) the process for identifying acceptable short-cycle diagnostic type assessment instruments for grades nine and ten; (b) identification of acceptable college placement and workforce readiness assessments; and (c) specific requirements for alternate demonstration of competency in the New Mexico's academic content standards required for high school graduation.

[6.19.7.6 NMAC - N, 1/30/09]

6.19.7.7 DEFINITIONS:

A. "Academic content standard" means a statement about performance that describes what students should know and be able to do in the content areas at each grade level and for high school. The purpose of content standards is to create a common curriculum so that students who move from school to school or from district to district have access to the same curriculum, and so that teachers know what they are supposed to teach.

B. "Artifacts" means works independently created by students that serve as evidence addressing the standards-based indicators.

C. "Career cluster" means a grouping of occupations in industry sectors based on recognized commonalities. Career clusters provide an organizing tool for developing instruction within the educational system.

D. "College placement assessment" means a nationally-normed exam used for placement into postsecondary courses.

E. "Department" means the public education department ("PED").

F. "District" means the geographic boundary in which a K-12 set of

schools resides, under the supervision of a locally-elected board of education.

G. "Electronic student management system" means an individual student-based, interactive system for personal management and review of requirements associated with graduation and being ready for college or the workforce.

H. "End-of-course examination" means an exam administered to assess student content knowledge upon completion of a course.

I. "Performance standard" means a statement describing the specific level of mastery expected in achieving the content standards.

J. "Portfolio" means a collection of student produced artifacts that demonstrate competence of standards using standards-based indicators in a set electronic format with fixed categories of student information and artifacts.

K. "Postsecondary school" means a public postsecondary educational institution operating in the state, including a community college, branch community college, and four-year educational institutions.

L. "School administrator" means the superintendents, and administrators of public schools, state educational institutions, and state agencies.

M. "Short-cycle diagnostic type assessment" means a formative measure that is regularly used to assess student performance over a short time period.

N. "Standards-based indicators" means multiple and varied measures that are aligned to the state content and performance standards and that demonstrate student competency in the subject areas required for graduation.

O. "State educational institutions" means those institutions enumerated under Article 12, Section 11 of the New Mexico State Constitution, except for institutions of higher education and the New Mexico military institute.

P. "Workforce readiness assessment" means a criterion referenced assessment developed for the purposes of assessing skill levels needed for clusters or categories of related jobs or for employment in a specific field of work. Workforce readiness assessments may include standardized assessments, industry certifications or licensure.

[6.19.7.7 NMAC - N, 1/30/09]

6.19.7.8 NINTH AND TENTH GRADE SHORT-CYCLE DIAGNOSTIC TYPE ASSESSMENTS

A. Short-cycle diagnostic type assessments in reading, language arts and mathematics shall be administered to all ninth and tenth grade students in the fall of

each year and at least two other times during the school year. The tenth grade short cycle diagnostic type assessment shall also serve as an early indicator of college readiness.

B. Any student who may have skipped either the ninth or tenth grade for whatever reason, must take at least one of the three administered grade level short cycle diagnostic type assessments in each of reading, language arts and mathematics for whichever grade level that was skipped.

C. No later than September 30, 2009, the department shall approve at least one short cycle diagnostic type assessment for statewide administration subject to the results of an impartial alignment study with the New Mexico content standards and performance benchmarks.

D. Any school district, charter school, state educational institution or state agency wishing to develop or adopt their own local short-cycle diagnostic type assessments must present the assessment instruments to the department for approval before administering them to satisfy the requirements of 6.19.7.8 NMAC.

E. Accommodations for students with disabilities and limited English proficiency shall be made in accordance with Subsection K of 6.30.2.10 NMAC.

F. Results of the short-cycle diagnostic type assessments shall be reported in written form in a format and language understandable to students, parents and school administrators as soon as possible, but no later than four weeks from the date of administration of the assessments.

G. The assessments and written or orally provided assessment results specified in Subsections A and B of 6.19.7.8 NMAC shall be provided to all ninth and tenth grade students at no cost to students or parents.

[6.19.7.8 NMAC - N, 1/30/09]

6.19.7.9 ELEVENTH GRADE COLLEGE AND WORKFORCE READINESS ASSESSMENTS

A. By fall of 2009, school administrators shall ensure that all eleventh grade students choose and participate in one of the following: a college placement assessment, a workforce readiness assessment, or alternate demonstration of competency using standards-based indicators.

B. By fall of 2009, the department shall approve one college placement assessment for statewide implementation.

C. By fall of 2010, the department shall approve at least one workforce readiness assessment and identify industry certifications that are appropriate

for each of the state's designated career clusters.

D. Participation in the high school readiness assessment system shall be provided at no cost to students.

[6.19.7.9 NMAC - N, 1/30/09]

6.19.7.10 ALTERNATE DEMONSTRATION OF COMPETENCY USING STANDARDS-BASED INDICATORS

A. Alternate demonstration of competency of high school exit requirements using standards-based indicators may include, but is not limited to the following:

(1) results from post-secondary nationally-normed assessments;

(2) results from workforce readiness assessments;

(3) results from end-of-course examinations;

(4) school-based projects such as extended papers, themes, theses, or research projects;

(5) performances or works of art that can be recorded in an electronic format; and

(6) community-based projects such as internships, service learning, pre-apprenticeship, or after-school job performance.

B. The alternate demonstration of competency must not contain the following:

(1) products not the result of the student's independent work;

(2) projects that involve vertebrate animal subjects;

(3) collaborations where an individual student's contributions cannot be distinguished;

(4) course grades, teacher or employer recommendations or testimonials;

(5) artifacts that are not related to the content standards required for graduation;

(6) material that is inflammatory, derogatory, or humiliating.

C. All projects, including those involving human subjects and microorganisms, or other potentially hazardous biological agents, must follow the international rules and guidelines governing the international science and engineering fair.

D. Requirements for alternate demonstration of competency using standards-based indicators:

(1) Students must have participated in the short-cycle diagnostic type assessments at ninth and tenth grades in the required subject areas at least once and before submitting artifacts to be considered for alternate demonstration of competency.

(2) Students who have participated in a college placement or workplace

readiness assessment may create a portfolio of artifacts as further evidence of competency or to submit to postsecondary institutions, potential employers, businesses, community organizations, or any institution that requires educational credentials for admission, scholarships, employment, partnerships, internships, apprenticeships, or any opportunity for advancement in learning, earning potential, military service, and citizenship.

(3) Assembly of the portfolio may incorporate artifacts from as early as grade nine.

(4) Students may submit a portfolio in English, Spanish, or in a Native American language of an Indian nation, tribe or pueblo located in New Mexico as per conditions of a tribal/public education department memorandum of agreement.

(5) Alternate demonstrations of competency shall not be used for federal accountability requirements and will not be included in adequate yearly progress (AYP) calculations. Students who receive a New Mexico diploma of excellence and who have demonstrated competency through the compilation of a portfolio shall be considered to have graduated and shall count as high school graduates.

(6) Students may provide alternate demonstrations of competency using standards-based indicators within five years of exiting a public school or state educational institution in order to satisfy competency in required subject areas and receive a New Mexico diploma of excellence.

(7) Unless special accommodations are required, portfolios shall be submitted to school authorities electronically, use uniform templates, and follow procedures established by the department.

(8) School administrators shall establish local procedures for determining whether the alternate demonstration of competency:

(a) is complete and scorable;

(b) addresses the appropriate academic content standards; and

(c) be determined as adequately showing competency.

(9) Electronic documentation of alternate demonstrations of competency shall be stored electronically by the district for five years from the time of submission.

(10) If at the end of grade twelve a student has not demonstrated competency in the required subject areas on standards-based indicators, the student will be issued a certificate indicating course credits earned and grade level completed.

[6.19.7.10 NMAC - N, 1/30/09]

6.19.7.11 ELECTRONIC STUDENT MANAGEMENT SYSTEM: The results from the student's participation in the high school readiness assessment sys-

tem, along with the next-step plan and other graduation related requirements in accordance with Section 22-13-1.1, NMSA 1978, shall be maintained in the electronic student management system.

[6.19.7.11 NMAC - N, 1/30/09]

HISTORY OF 6.19.7 NMAC: [RESERVED]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.20 NMAC, Section 14, effective 1/30/09.

3.2.20.14 RECEIPTS FROM GRANTING LICENSES TO USE REAL PROPERTY:

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from granting licenses to use real property, other than admissions or the grantings of permission to participate in a recreational, athletic or entertainment activity, or to park vehicles, tie-down spaces or dock boats, are not receipts from a taxable activity. Such revenues are not governmental gross receipts.

B. Example 1: City X operates a parking garage open to the general public. It sells permits for use of designated parking spaces for an entire month. It also charges a fee for use of any undesignated spaces on a hourly basis. The revenues from the monthly permits and the hourly use charges are ~~not~~ governmental gross receipts.

C. Example 2: The commissioner of public lands receives fees from granting ranchers the right to graze livestock on public lands. These fees are not governmental gross receipts.

D. Example 3: University A rents its auditorium to a private group for a rock concert. The rental agreement calls for payment to A of a flat fee plus a percentage of the gate. A's receipts are receipts from the granting of a license to use real property and are not governmental gross receipts. If, in addition to the basic terms of the rental arrangement, A also agreed to furnish security, janitorial services and ticket selling services for additional fees, A's receipts from performing such services are not governmental gross receipts because these services are not refuse collection, refuse disposal, sewage or recreational, entertainment or athletic services.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.14 NMAC - Rn, 3 NMAC 2.100.14, 4/30/01; A, 1/30/09]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.6.5 NMAC, Section 41, effective 1/30/09.

3.6.5.41 METHODS OF DETERMINING MARKET VALUE OF AFFORDABLE HOUSING

A. Application for reduced valuation of affordable housing. Not later than the last day of February of the tax year for which a reduced valuation is claimed pursuant to Section 7-36-15(B)(2) NMSA 1978, a property owner shall file an application with the county assessor, in a form prescribed by the division.

B. Value of residential housing property affected by affordable housing subsidies; taxpayer required documents. Except as otherwise provided by this section, an owner of residential property that qualifies for a reduced valuation for a tax year pursuant to Section 7-36-15(B)(2) NMSA 1978 shall submit to the county assessor, not later than the last day of February of that tax year:

(1) a copy of each document that establishes the type, amount and term of the affordable housing subsidy, covenant or encumbrance imposed pursuant to a federal, state or local affordable housing program; or

(2) a copy of the property owner's purchase agreement for the residential housing and a copy of the property owner's real estate closing agreement for the residential housing.

C. County assessor waiver of required documents. A county assessor may waive submission of the documents that an owner of residential housing is required to submit by Subsection B of this section if that county assessor independently verifies the type, amount and term of each affordable housing subsidy, covenant or encumbrance that results in a decrease in value for the residential housing pursuant to Section 7-36-15(B)(2) NMSA 1978. The county assessor may obtain and verify such information by examining records of the county clerk. The county assessor shall request documents from the property owner as required by Subsection A of this section with respect to an affordable housing subsidy, covenant or encumbrance for which the county clerk has no record.

D. Apartments classified as residential property. Property owners who own apartment buildings classified as residential property shall submit, in addition to documents required by this section, evidence satisfactory to the county assessor, of the amount and source of income per unit,

including, but not limited to, federal Title VIII vouchers.

E. Reporting changes in subsequent years. If a property owner receives a reduced valuation with respect to an affordable housing subsidy, covenant or encumbrance pursuant to Section 7-36-15(B)(2) NMSA 1978 for a property tax year, the property owner shall, no later than the last day of February of each subsequent property tax year, report any change in the type, amount and term of any affordable housing subsidy, covenant or encumbrance imposed pursuant to a federal, state or local affordable housing program.

F. Certification of no change. If a property owner receives a reduced valuation with respect to an affordable housing subsidy, covenant or encumbrance pursuant to Section 7-36-15(B)(2) NMSA 1978 for a property tax year, and the type, amount and term of that subsidy, covenant or encumbrance has not changed for five property tax years subsequent to the filing of an application, reported change, or certification of no change pursuant to this section, the property owner shall certify to the county assessor that no such change has occurred during that period. A property owner is not required to file a certification of no change with the county assessor any time prior to the date that occurs five property tax years after the last application, reported change, or certification of no change is filed with the county assessor.

G. County assessor use of required documents. A county assessor shall use the documents submitted by a property owner in accordance with this section to determine the value of property for property taxation purposes pursuant to Sections 7-36-15 and 7-36-16 NMSA 1978. The county assessor shall use the documents to complete a statement of adjusted value that:

(1) is in a form prescribed by the division; and

(2) contains a calculation of the property owner's equity in the property, in accordance with Section 7-36-15 NMSA 1978, as of the first day of the applicable tax year; that calculation shall account for:

(a) the unencumbered market value of the property for the applicable property tax year; and

(b) any decrease in the value that would be realized by the owner in a sale of the property because of the effects of any affordable housing subsidy, covenant, or encumbrance imposed pursuant to a federal, state or local affordable housing program that restricts the future use of the property or the resale price of the property or would otherwise prohibit the owner from fully benefiting, excluding shared appreciation features, from any enhanced value of the

property.

H. Title company provision of documents to property owners. Title companies shall be encouraged to provide documents required in Subsection B of this section to property owners. A county assessor shall request each title company in its county to provide documents required in Subsection B of this section to the county assessor in accordance with applicable laws.

[3.6.5.41 NMAC - N, 1/30/09]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 18.19.5 NMAC, Sections 117 and 118, effective 1/30/09.

18.19.5.117 COMMERCIAL DRIVER'S LICENSE - RECIPROCITY A. COMMERCIAL

DRIVER'S LICENSE - RECIPROCITY WITH CANADA: Pursuant to agreements entered into by the United States, reciprocity is also extended to any person who holds a commercial driver's license issued by the national government of Canada or any of the provinces of Canada if the license is not suspended, revoked or canceled and if the person is not disqualified from driving a commercial motor vehicle or subject to an out-of-service order.

B. COMMERCIAL DRIVER'S LICENSE - MEXICAN DRIVER'S LICENSES: A Mexican national issued a licencia federal de conductor by the secretariat of communication and transport of the United Mexican States may operate a commercial vehicle in New Mexico [~~if the commercial vehicle is registered in Mexico~~].

[2/28/90, 8/20/93, 10/31/96; 18.19.5.117 NMAC - Rn, 18 NMAC 19.5.18.1 and 18 NMAC 19.5.18.2, 9/14/00; A, 1/30/09]

18.19.5.118 INSTRUCTION PERMIT - PURPOSE - CRITERIA:

A. For purposes of 18.19.5.118 NMAC:

(1) "alternative test" means a test provided by the PED or approved by the PED pursuant to its rules and procedures and administered in a public school, non-public school or by a home school operator to measure a student's proficiency in reading and math in the eighth grade;

(2) "IDEA" means the Individuals with Disabilities Education Improvement Act of 2004 [20 U.S. Code Sec. 1400 et seq.], which is a comprehensive federal law that addresses specially designed instruction, at no cost to the parent, to meet the unique needs of a child with

disabilities;

(3) "IEP" means an individualized education program, which is a written statement designed to meet the unique educational needs of a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Sections 300.320 through 300.324;

(4) "minor" means a person under the age of eighteen (18) years, but at least fifteen (15) years old;

(5) "nearing an academic proficiency score in reading and math in the eighth grade" means attaining a minimum score in reading and math during a student's eighth grade as established by the laws, rules or procedures of the PED on the New Mexico standards based assessment;

(6) "New Mexico standards based assessment" means a system for testing students in various grades for their proficiency in the subject areas of mathematics, reading and language arts, writing, science and social studies; pursuant to the Assessment and Accountability Act [22-2C-1 to 22-2C-11 NMSA 1978] and procedures of the PED, assessments on various subject areas that include science, mathematics and reading are administered annually to students in different grades;

(7) "ninety percent school attendance" means one of several indicators used pursuant to the Assessment and Accountability Act [22-2C-1 to 22-2C-11 NMSA 1978] and procedures of the PED to measure public school improvement, but would not include excused absences;

(8) "PED" means the public education department;

(9) "Section 504" means Section 504 of the Rehabilitation Act of 1973 [29 U.S. Code Section 794] and its implementing regulations, which provide that "no otherwise qualified individual with a disability shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance; and

(10) "Section 504 plan" means the accommodation plan required if the individual has a mental or physical impairment that substantially limits one or more of the person's major life activities, including learning, but is not already receiving special education services under the eligibility requirements of the IDEA.

B. The director may issue an instruction permit to a minor under the provisions of Subsection D of Section 66-5-8 NMSA 1978. In order to motivate minors to attend school and succeed in their studies, beginning with applications submitted to the director on or after September 1, 2011, a minor applying for an instruction permit shall provide evidence of ninety percent school attendance during their ninth

grade year and at least nearing an academic proficiency score in reading and math in the eighth grade on the New Mexico standards based assessment or on an alternative test.

C. A minor applying for an instruction permit must provide the following:

(1) satisfactory proof of identity number, identity and residency as set forth in 18.19.5.12 NMAC;

(2) proof of attendance in or completion of a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school;

(3) a school compliance verification form approved by the director that shall include parental consent for the release of certain educational information to the director; the school compliance verification form shall be certified by a school official and signed by a parent to indicate consent to release the minor's student information to the director; the form shall certify that the applicant has:

(a) achieved ninety percent school attendance, not including excused absences, during the ninth grade year or portion of the ninth grade year prior to applying for the instructional permit; and

(b) demonstrated at least nearing an academic proficiency score in reading and math in the eighth grade on the New Mexico standards based assessment or on an alternative test.

D. The school compliance verification form shall permit children with disabilities as described in the IDEA and in federal and state regulations and children for whom Section 504 plans are in place to obtain certifications that consider the effect if any of their disabilities in meeting ninety percent school attendance during the ninth grade year or portion of the ninth grade year or demonstrating at least nearing an academic proficiency score in reading and math in the eighth grade. Any such certification must be based on a written IEP or Section 504 team recommendation contained in the IEP or Section 504 plan of a child with a disability. In making the recommendation to the person or official who enters the certification on the school compliance verification form where a child with a disability fails to satisfy the attendance or proficiency requirements discussed in this rule, the IEP or Section 504 team shall, pursuant to rules and procedures of the PED, consider whether a child's disability affected their ability to satisfy either or both the attendance or proficiency requirements.

E. In lieu of a school compliance verification form, an applicant may provide:

(1) proof of graduation from a high school; or

(2) proof of having received a

general educational development certificate.

F. A minor enrolled in non-public school or in a home school shall submit satisfactory proof of identity number, identity and residency as set forth in 18.19.5.12 NMAC, proof of attendance, and proof of ninety percent school attendance and at least nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test, as established by the laws, rules or procedures of the PED. This evidence shall be submitted on a form approved by the director that shall include parental consent for the release of certain educational information to the director.

G. Failure to demonstrate ninety percent school attendance will result in the minor being ineligible to be issued an instruction permit until six months from the date of application, unless an administrator of a non-public school or operator of a home school certify to their non-maintenance of attendance records.

H. Failure to demonstrate nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test will result in the minor being ineligible to be issued an instruction permit until six months from the date of application.

I. Failure to demonstrate both ninety percent school attendance and nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test will result in the minor being ineligible to be issued an instruction permit until one year from the date of application, unless an administrator of a non-public school or operator of a home school certify to their non-maintenance of attendance records.

[18.19.5.118 NMAC - N, 1/30/09]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES
2009

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Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 2	March 16
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 14
Issue Number 10	May 15	May 29
Issue Number 11	June 1	June 15
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Issue Number 13	July 1	July 16
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Issue Number 20	October 16	October 30
Issue Number 21	November 2	November 13
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

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