

**NEW
MEXICO
REGISTER**

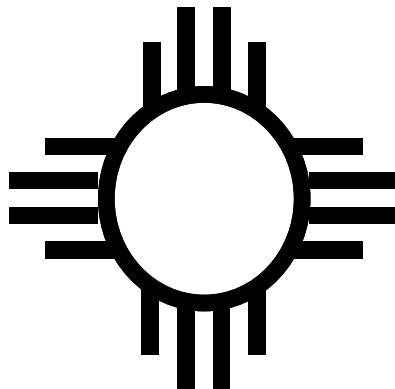


Volume XX
Issue Number 13
July 16, 2009

New Mexico Register

Volume XX, Issue Number 13

July 16, 2009



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

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New Mexico Register

Volume XX, Number 13

July 16, 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A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered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

**NEW MEXICO
DEPARTMENT OF
CULTURAL AFFAIRS**
ARTS DIVISION

NOTICE OF HEARING ON
PROPOSED RULES GOVERNING THE
NEW MEXICO ARTS DIVISION

Notice is hereby given that pursuant to the New Mexico Arts Commission and Division Act Section 18-5-7(F) NMSA 1978, the New Mexico Arts Division proposes to adopt regulations to update the New Mexico Arts Art in Public Places Program procedures, requirements, and programs.

The proposed regulations update the New Mexico Arts Art in Public Places Program procedures, requirements, and programs. The proposed changes will be discussed, and comments taken at a public hearing to be held on August 17, 2009. The updates will be heard between 9:30 am and 12:30pm. The hearing will be held at the New Mexico Arts Conference Room, Suite 270, the Bataan Memorial Building, 270 Galisteo, Santa Fe. Copies of the proposed regulations may be obtained before the meeting at the New Mexico Arts Division offices listed above or by contacting Chuck Zimmer at 505/827-6490 or by e-mail chuck.zimmer@state.nm.us. The notice of the public hearing and the proposed language changes will be posted on NMA website www.nmarts.org under "Breaking News".

Interested persons may submit written comments to the New Mexico Arts Division at PO Box 1450, Santa Fe, NM 87504-1450 or e-mail comments regarding the funding programs to chuck.zimmer@state.nm.us to be received by 8:00 am August 17, 2009. Written comments shall suggest specific reasons for any suggested amendments or comments and include any proposed amendatory language.

If any interested person has a disability and requires some accommodation in attending the public hearing or to have the rules communicated to them, please submit a written request identifying the disability and the type of accommodation needed to Chuck Zimmer before August 14, 2009. If accommodation is not requested in advance we cannot guarantee the availability of accommodation on-site.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 AM, on August 17, 2009, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing is Medicaid Extension Categories EXT-500 and EXT-600 of the Medicaid Policy Manual.

The Human Services Department, Medical Assistance Division, is proposing to re-number these sections in the NMAC format and policy citations will reflect NMAC citations where possible. There are no substantive changes to policy. The Medicaid Extension Categories of Eligibility are 001, 003 and 004.

Interested persons may submit written comments no later than 5:00 p.m., August 17, 2009, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

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

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Friday, August 21, 2009. The hearing will be held during the Board's regular business meeting beginning at 8:00 a.m., at the State Personnel Office, Willie Ortiz Building at 2600 Cerrillos Road, Santa Fe, New Mexico 87505.

The purpose of the Rule Hearing is to consider amending SPB Rules and Regulations related to Subsection C of 1.7.11.13 NMAC Employees in Career Status.

A final agenda for the board meeting will be available at the board office on August 7, 2009.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m. August 17, 2009, to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87505, attention, Ken Giles. Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.spo.state.nm.us/ beginning July 16, 2009.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

**NEW MEXICO PUBLIC REGULATION COMMISSION
TRANSPORTATION DIVISION**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION)
OF A PROPOSED AMENDMENT TO)
THE COMMISSION'S ANNUAL PIPELINE)
SAFETY FEES RULE,)
) : **Case No. 09-00198-PL**
PIPELINE SAFETY BUREAU STAFF)
OF THE TRANSPORTATION DIVISION OF)
THE PUBLIC REGULATION COMMISSION,)
))
Petitioner.)
))

NOTICE OF PROPOSED RULEMAKING

NOTICE is hereby given that the New Mexico Public Regulation Commission ("NMPRC" or the "Commission") is commencing a rulemaking proceeding for the purpose of addressing a proposed amendment to NMPRC Rule 18.60.3 NMAC governing the annual pipeline safety fee. The proposed rule amendment, which is attached hereto as Exhibit A, would be promulgated under authority granted to the Commission by the New Mexico Constitution, Article XI, Section 2 (1996), and by the Legislature pursuant to NMSA 1978 Sections 8-8-4 and 8-8-15. The proposed amendment was requested by Staff in Staff's Request for Approval of Pipeline Safety Fees for Fiscal Year 2010 and Request for Rulemaking to Amend 18.60.3.11.A NMAC ("Request") filed on May 29, 2009 in Case No. 09-00121-PL. Pursuant to the Commission's Final Order issued June 4, 2009 in Case No. 09-00121-PL, a copy of the Request was filed in this docket.

As reflected in Exhibit A, Staff proposes to amend Subsection A of Section 11 of 18.60.3 NMAC by revising the annual fund review deadline of September 1 to May 1 of the following calendar year. Staff's supports its proposal on two grounds: (1) the preceding fiscal year balance of the pipeline safety fund is not known by September 1, and in fact generally is not known until the following December or January, with the result that Staff has had to request a number of variances of the September 1 deadline; and (2) administrative economy would be promoted by having the fund review deadline of correspond with the May 1 deadline for the next year's fee application.

Any person wishing to comment on the proposed amendments may do so by submitting written comments no later than July 7, 2009. Any person wishing to respond to comments may do so by submitting written response comments no later than July 21, 2009. Comments suggesting changes to the rule amendment as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the draft rule shall be provided in legislative format.

All pleadings, including comments, shall bear the caption and case number contained at the top of this notice. Comments on the proposed amendment, shall be sent to: Docketing Office

NMPRC-Transportation Division
 PERA Bldg. Room 406
 1120 Paseo de Peralta 87501
 PO Box 1269
 Santa Fe, New Mexico 87504-1269
 Telephone: (505) 827-4526

A public hearing will begin at 10:00 on August 5, 2009 at the offices of the NMPRC Administrative Services Division, PERA Bldg, 4th Fl, 1120 Paseo de Peralta, Santa Fe, New Mexico to receive oral comment and to clarify or supplement the written comments. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

Interested persons should contact the Commission to confirm the date, time and

place of any public hearing because hearings are occasionally rescheduled.

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

1.2.3.7(B) NMAC ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications". In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be August 31, 2009, or the date a Final Order is issued in this case, whichever is earlier. The setting of that record closure date will permit Commissioners and Commission counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rules or responses to any bench request orders. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

Copies of any Final Order adopting the proposed amendment and proposed rule will be sent, along with copies of the particular rule, to the Commission's Pipeline Safety Fee Service List for Case No. 09-00121-UT.

IT IS THEREFORE ORDERED:

A. The proposed rule, attached to this Notice of Proposed Rulemaking as Exhibit A, is proposed for adoption as a permanent rule as provided by this Notice.

B. Initial comments on the proposed rule must be filed by July 7, 2009, and response comments must be filed by July 21, 2009.

C. A public comment hearing shall be held as provided in this Notice of Proposed Rulemaking.

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

E. The record in this case,

for the purposes of 1.2.3.7(B) NMAC shall be closed at 5:00 p.m. on August 31, 2009, or the date a Final Order is issued in this case, whichever is earlier.

F. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 4th day of June, 2009.

NEW MEXICO PUBLIC REGULATION COMMISSION

SANDY JONES, CHAIRMAN

DAVID W. KING, VICE CHAIRMAN

JASON A. MARKS, COMMISSIONER

JEROME D. BLOCK, COMMISSIONER

CAROL K. SLOAN, COMMISSIONER

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to adopt the following regulations:

Cigarette Tax Act

3.9.1.19 NMAC Section 7-12-13.2 NMSA 1978

(Possession of Contraband Cigarettes; Seizure)

3.9.1.20 NMAC Section 7-12-13.2 NMSA 1978

(Right of Appeal)

3.9.1.21 NMAC Section 7-12-13.2 NMSA 1978

(Appeal Procedures)

3.9.1.22 NMAC Section 7-12-13.2 NMSA 1978

(Forfeiture)

These proposals were placed on file in the Office of the Secretary on July 1, 2009. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about September 15, 2009.

A public hearing will be held on these proposals on Wednesday, August 19, 2009, at 9:30 a.m. in the Secretary's Conference

Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before August 19, 2009.

3.9.1.19 POSSESSION OF CONTRABAND CIGARETTES;

SEIZURE: Cigarettes in the possession of any person which are deemed contraband cigarettes pursuant to Subsection B of Section 7-12-2 NMSA 1978 shall be subject to immediate seizure by the department. The department shall not be required to obtain a warrant or court order prior to the seizure of cigarettes deemed to be contraband.

[3.9.1.19 NMAC - N, XXX]

3.9.1.20 RIGHT OF APPEAL:

Any person engaged in the direct retail sale of cigarettes in New Mexico from retail stores, vending machines, mail order or internet sales facilities, or other retail business who has been subject to the seizure of contraband cigarettes shall have no right to appeal their seizure or any imposition of civil penalties authorized by Section 7-12-13.1 NMSA 1978 and the cigarettes seized shall be immediately forfeited and subject to destruction by the department. Any person not engaged in the direct retail sale of cigarettes in New Mexico shall have a right to appeal the department's determination that cigarettes seized are contraband under Subsection B of Section 7-12-2 NMSA 1978, and any imposition of civil penalties authorized by Section 7-12-13.1 NMSA 1978. Any person shall have a right to appeal the department's decision to deny, suspend or revoke the issuance of a cigarette distributor or manufacturer license.

[3.9.1.20 NMAC - N, XXX]

3.9.1.21 APPEAL PROCEDURES:

The following are the appeal procedures for appeals permitted under 3.9.1.20 NMAC:

A. Appeals shall be submitted in writing to the office of the secretary of the taxation and revenue department. Appeals must be received by the office of the secretary or, if mailed, must bear a postmark date, within 10 days after the date cigarettes are seized by the department, the date of a notice of denial, suspension or revocation of a license, or the date of a notice

of imposition of civil penalties or, where the tenth day falls on a Saturday, Sunday or legal state holiday, the next business day following the tenth day.

B. Contents of appeal. The appeal shall:

(1) include the name and address of the appellant;

(2) contain a statement of the grounds for appeal, including any law to support the grounds for appeal; and

(3) include supporting exhibits, evidence or documents to substantiate the appellant's claim.

C. Upon the receipt of a timely appeal, the secretary shall review the materials submitted and shall issue a written decision granting or denying the appeal.

(1) In the event that an appeal is granted with respect to seized cigarettes, the cigarettes seized by the department shall be released to the appellant.

(2) In the event that an appeal is denied, the secretary's decision shall include the reasons for the denial of the appeal. The decision of the secretary to grant or deny an appeal shall become final and conclusive 30 days from the date the written decision is mailed by the department to the appellant.

[3.9.1.21 NMAC - N, XXX]

3.9.1.22 FORFEITURE:

In the absence of the filing of a timely appeal of a seizure of contraband cigarettes or when a decision to deny an appeal of a seizure has become final, the cigarettes seized by the department shall be deemed forfeited and subject to destruction by the department.

[3.9.1.22 NMAC - N, XXX]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to amend the following regulation:

Weight Distance Tax Act

3.12.12.9 NMAC Section 7-15A-12 NMSA 1978

(Weight Distance Tax Identification - Administrative Fee)

This proposal was placed on file in the Office of the Secretary on July 1, 2009. Pursuant to Section 9-11-6.2 NMSA 1978

of the Taxation and Revenue Department Act, the final of the proposal, if filed, will be filed as required by law on or about September 15, 2009.

A public hearing will be held on the proposal on Thursday, August 20, 2009, at 9:30 a.m. in the Bid Room on the first floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposal are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposal should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before August 20, 2009.

3.12.12.9 WEIGHT DISTANCE TAX IDENTIFICATION PERMIT - ADMINISTRATIVE FEE: Any person that applies for and receives a weight distance tax identification permit shall pay an administrative fee ~~[of two dollars (\$2.00) for each permit.]~~ that shall not exceed \$10.00. The administrative fee shall be \$5.50 upon the effective date of this regulation. The administrative fee may be increased or decreased by the secretary after due consideration of the costs of issuing and administering weight distance tax identification permits and of enforcing permits use. Persons who have current weight distance tax identification permits will be notified if the secretary changes the fee at least 30 days prior to effective date of a change in the fee. The administrative fee will be ~~[used to defray the costs incurred by the department for the processing and issuing of the weight distance tax identification permits]~~ deposited in the weight distance tax identification permit fund to pay the costs of issuing and administering weight distance tax identification permits and costs incurred by the department and the motor transportation division of the department of public safety to enforce the use of such permits by motor carriers in accordance with the Weight Distance Tax Act. The administrative fee will be imposed for every permit, including annual renewals and replacements.
[3.12.12.9 NMAC - N, 7/1/04; A, XXX]

**NEW MEXICO WATER
QUALITY CONTROL
COMMISSION**

**NEW MEXICO WATER QUALITY
CONTROL COMMISSION**

**NOTICE OF PUBLIC HEARING
TO CONSIDER PROPOSED
AMENDMENTS**

**TO 20.6.4 NMAC - STANDARDS
FOR INTERSTATE AND
INTRASTATE SURFACE WATERS -
THE TRIENNIAL REVIEW**

The New Mexico Water Quality Control Commission (WQCC) will hold a public hearing beginning at 9:00 a.m. on December 8, 2009 and continuing on subsequent days as necessary in Room 309 of the State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, to consider proposed amendments to 20.6.4 NMAC - Standards for Interstate and Intrastate Surface Waters. The hearing is part of the triennial review of surface water quality standards that is required by Section 303(c) of the federal Clean Water Act.

The New Mexico Environment Department proposes substantial amendments to many sections of the standards.

Several other petitioners also propose amendments, all of which will be available at:

<http://www.nmenv.state.nm.us/oots/HearingOfficer/TR2009/index.html> and will be considered in the hearing.

Proposed amendments would add or revise: definitions, general and numeric criteria, enforcement provisions, use attainability analysis requirements, uses and criteria for unclassified waters and some classified segments, provisions for site-specific criteria and other provisions.

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6 of the Water Quality Act; the Guidelines for WQCC Regulation Hearings; and the specific Hearing Guidelines and Scheduling Order entered by the Hearing Officer appointed for this matter, Felicia Orth. These documents, all proposed amendments and other documents related to the hearing are available also at:

<http://www.nmenv.state.nm.us/oots/HearingOfficer/TR2009/index.html> website.

They may also be obtained electronically or reviewed in person by contacting:

Joyce Medina, WQCC Administrator
1190 St. Francis Dr., PO Box 5469
Santa Fe, NM 87502

Tel: (505) 827-2425

Fax: (505) 827-2836

E-mail: joyce.medina@state.nm.us

The post-hearing process will include an opportunity for parties to submit proposed findings and conclusions and written legal argument. The Commission is expected to take up the matter for decision at its regular meeting in either April or May 2010.

Technical Testimony:

In order to present technical testimony at

the hearing, a person must file a notice of intent to present technical testimony with the WQCC Administrator no later than August 28, 2009. The notice shall:

1. identify the person for whom the witness(es) will testify;
 2. identify each technical witness the person intends to present and state the qualifications of that witness including a description of their educational and work background;
 3. attach the full direct testimony of each technical witness;
 4. state the anticipated duration of the direct testimony of each technical witness;
 5. include the text of any recommended modifications to the proposed regulatory change; and
 6. identify and attach all exhibits to be offered by the person at the hearing.
- The Hearing Officer must exclude technical testimony and exhibits not timely filed.

Participation by the General Public:

Any member of the general public may present non-technical testimony and exhibits at the hearing. No prior notification is required. Persons desiring to present non-technical testimony may be heard at 11:30 a.m. each day that the hearing continues and at the end of the technical case. Public comment will also be taken in the evening on December 8th and 9th, 2009 between 6:30 and 7:00 p.m. in the auditorium of the Harold Runnels Building, 1190 St. Francis Drive, Santa Fe. A member of the general public may submit a written non-technical statement for the record in lieu of oral testimony at the hearing at any time prior to the close of the hearing.

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Judy Bentley at least ten days prior to the hearing date at NMED, Personnel Service Bureau, Room N-4071, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico, 87502. Ms. Bentley's telephone number is (505) 827-9872. TDY users please access Ms. Bentley's number through the New Mexico Relay Network at 1-800-659-8331.

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

JUVENILE JUSTICE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 14 JUVENILE JUSTICE
PART 7 SUPERVISED
RELEASE AND DISCHARGE

8.14.7.1 ISSUING AGENCY:
New Mexico Children, Youth and Families
Department.

[8.14.7.1 NMAC - N, 7/16/2009]

8.14.7.2 SCOPE: This rule
applies to clients who are committed to the
custody of juvenile justice services pursuant
to the Delinquency Act, staff of juvenile jus-
tice services of the children, youth and fam-
ilies department and the operators of facili-
ties contracted by CYFD.

[8.14.7.2 NMAC - N, 7/16/2009]

8.14.7.3 STATUTORY
AUTHORITY: NMSA 1978 SECTION 9-
2A-7(D) authorizes the secretary of the chil-
dren, youth and families department to
adopt regulations as necessary to carry out
the duties of CYFD. NMSA 1978 section
32A-2-19 provides that delinquent children
may be committed to the legal custody of
CYFD who is then responsible for deter-
mining the appropriate placement, supervi-
sion and rehabilitation of committed chil-
dren, and more generally NMSA 1978 sec-
tion 32A-2-1 et seq., the Delinquency Act,
contains various provisions relating to the
commitment, custody, and release of adjud-
icated children.

[8.14.7.3 NMAC - N, 7/16/2009]

8.14.7.4 DURATION :
Permanent.

[8.14.7.4 NMAC - N, 7/16/2009]

8.14.7.5 EFFECTIVE DATE:
July 16, 2009, unless a later date is cited at
the end of a section.

[8.14.7.5 NMAC - N, 7/16/2009]

8.14.7.6 OBJECTIVE: To pro-
vide for the transition, release, and supervi-
sion of juvenile offenders from juvenile jus-
tice services facilities.

[8.14.7.6 NMAC - N, 7/16/2009]

8.14.7.7 DEFINITIONS:

A. Absconder refers to a
client on probation or supervised release
who leaves the jurisdiction without permis-
sion, or an escapee or runaway from a
placement.

B. Aftercare refers to
supervised release case management pro-
vided to clients released from juvenile jus-
tice facilities and treatment programs.

C. Arrest warrant refers
to a warrant issued from district court order-
ing that a client be taken into custody.

D. Board means the juve-
nile public safety advisory board whose
members are appointed pursuant to the
Juvenile Public Safety Advisory Board Act,
1978 NMSA Sections 32A-7A-1 to 32A-
7A-8.

E. Classification officer
refers to a department employee who pro-
vides direct case management and client
advocacy throughout the client's commit-
ment. The classification officer provides
assessment of the client's risk, needs and
strengths by which the multi-disciplinary
team will assign appropriate placement.

F. Client family baseline
assessment refers to a written report by a
juvenile probation officer that identifies the
client's delinquent history and the strengths
and needs of the client and family.

G. Delinquent act refers
to an act committed by a juvenile that would
be designated as a crime under the law if
committed by an adult.

H. Department means the
children, youth, and families department.

I. Detention refers to the
temporary care of juveniles alleged to be
delinquent who require secure custody in a
facility certified for that purpose by the
department (Section 32A-2-4 NMSA 1978).

J. Facility refers to a
facility operated by, or on behalf of,
CYFD's juvenile justice services for pur-
poses of housing and providing care for
clients committed to the custody of CYFD.

K. Facility release panel
(panel) is the departmental secretary-desig-
nated releasing authority that considers
juveniles for supervised release.

L. Facility transition
coordinator (FTC) means a department
employee who works with the client and the
client's multi-disciplinary team, juvenile
probation officer, classification officer, and
regional transition coordinator to coordinate
the client's care while in the facility and
ensures that the required tasks of the client's
supervised release or extension track are
occurring in a timely manner.

M. Final supervised
release violation hearing means a proceed-
ing conducted by the department or its des-
ignated hearing officer, for the purpose of
determining whether to revoke supervised
release.

N. Home study means an
assessment of the living environment where

the juvenile offender may reside during the
term of supervised release; the assessment
is conducted by the department; specific
strengths and weaknesses of the living envi-
ronment are identified through the home
study process.

O. JJS is juvenile justice
services, a division of the children, youth
and families department.

P. JPO is a juvenile pro-
bation officer.

Q. Juvenile public safety
advisory board (JPSAB) will advise the
department on release decisions and make
recommendations regarding programs and
facilities.

R. Juvenile offender
means an individual committed to the cus-
tody of the department pursuant to the
Delinquency Act, 1978 NMSA Section
32A-2-1 through 32A-2-32; the term "juve-
nile offender" in this regulation includes
those individuals who are committed as
youthful offenders or up to age 21.

S. Multi-disciplinary
team (MDT) refers to the team that meets
at the facility to develop, monitor, and
revise client plans for placement and serv-
ices. The team includes the client and family
member(s), and behavioral health, educa-
tion, medical, a security representative, the
juvenile probation officer and a transition
coordinator if assigned.

T. Plan of care (POC)
refers to the plan developed at the first mul-
tidisciplinary team (MDT) meeting follow-
ing placement at the facility and reviewed
and updated at each subsequent MDT. The
plan included goals and objectives in all dis-
ciplines and is broadly available to all staff
with client contact.

U. Probation refers to a
court-ordered sanction and disposition
which places an adjudicated client under the
supervision and care of a juvenile probation
officer.

V. Regional transition
coordinator (RTC) means a department
employee whose duties may include coordi-
nation of community and aftercare services
for a client.

W. Release agreement
means the document stating the conditions
of supervised release as established by the
panel. The juvenile is required to agree in
writing to the agreement conditions as a
prerequisite to being placed on supervised
release status.

X. Release consideration
meeting means a proceeding conducted by
the panel for purposes of deciding whether
to grant, deny, defer or revoke supervised
release.

Y. Retake warrant refers

to the document issued by the department, directed to law enforcement and department staff to detain a client alleged to have violated conditions of supervised release, and return the client to a secure facility.

Z. Secretary means the secretary of the children, youth and families department.

AA. Supervised release refers to the release of a juvenile, whose term of commitment has not expired, from a facility for the care and rehabilitation of adjudicated delinquent children, with specified conditions to protect public safety and promote successful transition and reintegration into the community. A juvenile on supervised release is subject to monitoring by the department until the term of commitment has expired, and may be returned to custody for violating conditions of release.

BB. Supervised release plan means the department's recommendation for the conditions the juvenile offender should be required to fulfill if released, and presents workable methods of dealing with the juvenile offender's problems and needs through community intervention.

CC. Supervised release recommendation report is the report prepared by the FTC/designee to inform the panel of the juvenile's progress while committed and readiness for release through summaries of all the disciplines in the juvenile's plan of care and the plan for the juvenile if he or she is granted supervised release.

DD. Victim notification means notification to the district attorney of each district in the state of any supervised release of juvenile offenders pursuant to Section 31-26-12 NMSA 1978.

[8.14.7.7 NMAC - N, 7/16/2009]

8.14.7.8 FACILITY RELEASE PANEL

A. The facility release panel will conduct release consideration meetings at a minimum of monthly intervals to consider whether to grant release to juvenile offenders who are identified on the agenda. In addition to the regularly scheduled release consideration meetings, the panel may conduct special release consideration meetings upon recommendation of a facility or as a result of any circumstances that warrant review and consideration for release. Release consideration meetings may be held at any of the department's facilities.

B. The facility release panel consists of the JJS director/deputy director, the superintendent/designee from each CYFD facility, a behavioral health supervisor from the client's facility, a representative from education administration, and a quorum of the JPSAB. Video or teleconferencing shall be arranged for any

member of the panel who cannot attend in person. The JJS director/deputy director is the departmental representative of the panel for purposes of notifications and revocations.

(1) The JJS director/deputy director serves as the panel chairperson.

(2) Each member of the panel has one vote in release decisions, and decisions must be approved by a majority vote.

(3) The quorum of the board that participates in release consideration meetings confers on decisions and provides the panel with one vote for all of the board members.

[8.14.7.8 NMAC - N, 7/16/2009]

8.14.7.9 ELIGIBILITY FOR SUPERVISED RELEASE

A. A juvenile is eligible for supervised release any time after commitment to the department. A juvenile's supervised release date and placement is tentatively determined at their initial MDT meeting, based on the juvenile's client family baseline assessment and other information presented at the meeting. The MDT shall provide the juvenile with a notice of tentative release date at the conclusion of the Initial MDT. Once a tentative release date is determined, the juvenile shall be scheduled for the agenda of the release consideration meeting that coincides with that date, and agendas shall be provided to the juvenile public safety advisory board on a monthly basis. If so warranted by the juvenile's behavior or for other good cause, the release date may be moved up and the panel may consider a juvenile at an earlier release consideration meeting.

B. If after a release date is determined the MDT recommends that the juvenile's supervised release needs to be deferred, the MDT shall make written findings detailing the reasons for the deferral and provide those to the juvenile and the panel. The juvenile shall then be rescheduled as soon as practically possible for a release consideration meeting.

C. The panel shall base a decision to grant or deny supervised release on the following, as determined by the application of the specific criteria in Subsection D and the MDT's recommendation for release, as determined at the MDT at least two months prior to the scheduled release date:

(1) the public safety of the community;

(2) the likelihood of successful reentry and reorientation to the community, based on the extent of the client's rehabilitation and the proposed supervised release plan;

(3) the best interests of the client; and

(4) the likelihood of further

progress with the programs and services offered in the facility.

D. Specific criteria to be considered by the panel and the MDT include:

(1) the juvenile offender's preparedness and willingness to assume the obligations and responsibilities of the release agreement;

(2) the degree to which the proposed living arrangements and community are conducive to successful completion of release and reintegration into the community;

(3) the juvenile offender's progress, rehabilitation and conduct while in the facility, including as reflected through SDM information;

(4) the extent and nature of the juvenile offender's drug or other substance abuse, and his response to treatment;

(5) the juvenile offender's history of delinquency or previous commitment;

(6) the availability of community resources to assist the juvenile offender, especially those that are only available in the juvenile's community and not available in the facility;

(7) any behavioral health or medical needs that the juvenile may have that can be more appropriately addressed in the community;

(8) information supplied by victims; and

(9) the nature of the offense for which the juvenile offender is presently committed.

E. Any time the department modifies the release criteria, it must first confer with the juvenile public safety advisory board and consider the board's input. If criteria are changed, the board must be allowed to participate in the decision and if there are disagreements, the department and the board shall in good faith attempt to reconcile the disagreements. If the board and the department cannot reconcile, the reasons for disagreement shall be recorded and submitted to the director of facilities to make a final decision.

[8.14.7.9 NMAC - N, 7/16/2009]

8.14.7.10 CONDUCT OF RELEASE CONSIDERATION MEETINGS

A. Each FTC submits a proposed list of names of juveniles to be placed on the agenda to the panel at least forty days prior to the next regularly scheduled release consideration meeting dates. The FTC shall provide the release panel with the release consideration summary at least ten (10) days before the release consideration meeting.

(1) A client may appear on the panels' agenda by:

(a) an MDT recommendation for

release;

(b) personally petitioning the panel any time sixty days after commitment or after a denial of release;

(c) a board request to be placed on the agenda after a denial of release.

(2) The final agenda is prepared and approved by the JJS director/designee.

(3) The JJS director/designee distributes copies of the final agenda to the department's facilities sufficiently in advance so that the facilities may arrange for the juvenile offenders and the employees who will present their cases to be present.

(4) For purposes of victim notification and representation, the JJS director/designee notifies the administrative office of the district attorneys of the upcoming agenda at least ten days prior to the release consideration meeting and provides notice if there are changes made to the agenda. After the release consideration meeting, the AODA, the committing judge, and the NM public defender department are promptly notified of the juvenile offenders who were granted or denied supervised release and the reasons therefore.

(5) The JJS director/deputy director/designee provides a copy of the panel's agenda to the JPSAB at least thirty five (35) days before the release consideration meeting.

B. At least ten (10) days prior to a release consideration meeting, the members of the panel receive an updated supervised release recommendation report from the facility transition coordinator for each juvenile offender on the agenda. For special supervised release hearings or for juvenile offenders who are added to the agenda, the panel receives the updated supervised release recommendation report as soon as practicable. The updated supervised release recommendation report must include the following information:

(1) for the commitment period, summaries of:

(a) behavior at the facility, including any disciplinary actions;

(b) mental health/medical interventions;

(c) extra-curricular activity;

(d) academic/vocational progress;

(e) family involvement while in commitment, including family involvement in any community services offered or recommended;

(2) home study that includes the status of the juvenile offender's siblings and juvenile/adult relatives known to law enforcement authorities and includes the JPO's assessment of the juvenile offender's home situation, including an update if the home study is more than 60 days old or circumstances have changed significantly

since the completion of the home study;

(3) for the proposed supervised release period, the plan for:

(a) living arrangements; if the supervised release plan involves independent living, a full description of the proposed living and financial arrangements, including a budget breakdown; if an out-of-state release is proposed, all information required under applicable interstate compact provisions; if RTC, foster care, or other alternative living arrangement is proposed, how the placement will be funded and the estimated length of stay;

(b) education, including but not limited to, written confirmation from school officials or the juvenile offender's JPO as to anticipated school acceptance and grade level; any special educational programs should be outlined in the home study update;

(c) employment, including a letter from an employer setting forth the place of work, the beginning date if known, the number of hours, work schedule and rate of pay; information about employment arrangements should be made in the home study update;

(d) community service, including the name and location of the program and the number of hours of service recommended; the panel may consider such service as a complement or alternative to employment;

(e) community resources to be utilized to help the juvenile offender, including but not limited to alcohol, substance, drug, individual therapy, group therapy, mental health, sex offenders and family counseling programs; the counseling information shall specify particular programs and costs when possible;

(f) court ordered restitution or community service, which is to be arranged and coordinated through the department prior to supervised release;

(g) information provided by the victim, if any; and

(h) such additional information that the panel or facility may request in the particular case.

C. The panel interviews each juvenile offender and the juvenile's primary caregiver(s), if in attendance, at the release consideration meeting at which his or her supervised release is under consideration before making a decision to grant or deny supervised release. If the juvenile or the primary caregivers are unavailable to attend the meeting in person, vide or teleconferencing may be arranged.

D. Juvenile offenders are permitted to have legal counsel present at release consideration meetings.

E. Other than the juvenile, the juvenile's primary caregivers, and department representatives, the panel has

sole discretion and authority to determine who may be present at release consideration meetings, which are not open to the public.

F. Official minutes of release consideration meetings are prepared by the panel.

G. Any decision regarding supervised release shall be approved by a majority of the panel. If the action of the panel is not unanimous, the dissenting member may have the reasons for his or her dissent set forth in the official minutes of the release consideration meeting.

H. The panel shall grant release when:

(1) the client has reached, or will reach before the next regularly scheduled release consideration meeting, his or her 90 day mandatory release date, as determined by the length of commitment ordered by the court;

(2) the client meets release criteria;

(3) the purpose of the commitment has been achieved; or

(4) the department is unable to adequately meet the client's needs in any of its facilities or programs, a suitable facility or program is available in the community where the juvenile has been accepted for placement, and supervised release to that placement would not pose a substantial risk to the public safety.

I. The panel's decision is announced to the juvenile offender, the juvenile's family, and their placement (if out of home) within forty eight (48) hours of the conclusion of the release consideration meeting.

(1) If the panel decides to grant supervised release, the juvenile offender is immediately informed of the panel's decision and of the general and special conditions of release.

(a) The juvenile offender must agree and sign a written statement of the general and special conditions of release (the release agreement) in order for release to commence. The panel provides a copy of the proposed release agreement to the juvenile at the release hearing, and mails a copy to the juvenile's parent, guardian or custodian within five (5) days, if release is granted.

(b) A certificate of supervised release is prepared, and a copy is provided to the juvenile.

(2) If the panel decides to deny supervised release, the panel provides the juvenile offender, their family, and their placement (if out of home) with a written statement of reasons for denial. A copy of the statement is mailed to the juvenile offender's parent, guardian or custodian within five (5) days after the decision is made to deny release. The panel may deny supervised release when, based on informa-

tion presented at the release consideration meeting, a juvenile is not in a mandatory release period and:

(a) there is substantial risk to the public safety if he or she is released;

(b) there is a substantial likelihood the juvenile offender will not follow the conditions of supervised release;

(c) continued programming at the facility would be beneficial to the juvenile; or

(d) there exists any other reasons the panel deems sufficient and reasonable to deny supervised release.

J. Special release consideration meetings. Special release consideration meetings are scheduled at the discretion of the panel. Time frames applicable to the regularly scheduled release consideration meetings do not apply; however, the panel will coordinate receipt of any proposed agenda and distribution of the finalized agenda so that all interested parties and agencies receive as much notice as practicable. Notices of special release consideration meetings and agendas are provided to the AODA and the NM public defender department at least five days prior to the meeting.

K. If circumstances substantially change between a future release date and the date that release is approved by the panel, the panel may reconsider the decision to release and defer or deny release. If the panel decides to defer or deny release, it shall do so at a release consideration meeting, following all regular procedures, provided however, that supervised release may be temporarily deferred by the JJS director and the juvenile kept at the facility pending the convening of a release consideration meeting. Substantially changed circumstances include, but are not limited to:

(1) the juvenile's behavior in the period between approval and actual release is such that releasing him or her would pose a threat to his or her safety or the public safety;

(2) the placement that the juvenile is scheduled to be released to is not approved, cancelled, or otherwise modified such that releasing the juvenile would not be in his or her best interests; or

(3) any other credible information that comes to the attention of the panel that leads to a determination that the juvenile should not be released.

[8.14.7.10 NMAC - N, 7/16/2009]

8.14.7.11 GENERAL AND SPECIAL CONDITIONS OF SUPERVISED RELEASE

A. The panel determines the general and special conditions of supervised release. The panel may add, delete or change any of the general or special condi-

tions of supervised release.

B. The following are general conditions of supervised release to be included in all supervised release agreements.

(1) "I must maintain myself as a law-abiding citizen by following all municipal, county, state and federal laws, ordinances and orders, including laws and rules of Indian tribal councils when applicable. If I am enrolled in school, I must follow all school policies and regulations."

(2) "I must keep my JPO, my parents, custodian or guardian informed of my whereabouts at all times."

(3) "I will be required to have written permission of my JPO, in cooperation with my parents, guardian, or custodian, as appropriate, if I wish to temporarily leave the county to which I have been released."

(4) "I will inform my JPO, in cooperation with my parents, guardian, or custodian, as appropriate, if I am charged, arrested or detained by any law enforcement or juvenile authority, within a reasonable period of time, but no later than forty-eight (48) hours after arrest."

(5) "My JPO has the right to visit me at home, school or place of employment at any time."

(6) "I will follow curfew rules established by my JPO, as written with the cooperation of my parents, guardian or custodian."

(7) "I shall not use, possess, sell or transfer marijuana, narcotics or any other dangerous or illegal substances which have not been prescribed for me by a physician. I will participate in any examination requested by my JPO regarding possible use of such substances."

(8) "I will not possess or consume beer or any alcoholic beverage at any time while on supervised release. I will not enter any business commonly known as a bar, lounge or liquor store."

(9) "I must notify my JPO, in cooperation with my parents, guardian, or custodian, as appropriate, before applying for a marriage license or filing for divorce or legal separation."

(10) "I must not associate with anyone with whom my JPO, in cooperation with my parents, guardian, or custodian, as appropriate, forbids me to associate. This may include anyone with a criminal or delinquent record, anyone associated with a gang and anyone that may be detrimental to my successful completion of supervised release."

(11) "I cannot own, possess, sell, use or distribute firearms or other deadly weapons."

(12) "I will not endanger the person or property of someone else."

(13) "I will abide by all reason-

able instructions of my JPO."

(14) "I will report to my JPO within 24 hours of release and will remain under house restriction and direct parental supervision until such time as my JPO decides to lift the restriction".

C. The panel assigns special conditions of supervised release, including specific details so as to determine compliance and success, regarding:

(1) person, city, county and state into whose custody a juvenile is released;

(2) employment;

(3) school;

(4) counseling, including career counseling;

(5) volunteer community service;

(6) associations;

(7) residency;

(8) community service or restitution, if any; and

(9) any other special conditions the panel deems appropriate.

[8.14.7.11 NMAC - N, 7/16/2009]

8.14.7.12 BEHAVIOR DURING THE SUPERVISED RELEASE PERIOD

A. The department supervises juveniles on supervised release. The facility or regional transition coordinator /designee is responsible for providing the juvenile's juvenile probation officer with the supervised release recommendation report and any other documentation required to properly transition the juvenile to supervised release.

B. Modification of release conditions.

(1) Only the panel may substantially modify any of the terms of the supervised release agreement. The panel notifies the juvenile and his or her JPO of any such modifications.

(2) In an emergency situation, the JPO may temporarily approve a change of residency without prior approval from the panel. The JPO must notify the panel as soon as practicable. If the situation permits, the JPO should telephone the panel's chairperson for verbal approval prior to taking this emergency action.

(3) The JPO must submit a notification of supervised release change to the panel for approval of any proposed minor modifications to the written release agreement.

C. Absconders. When a juvenile on supervised release conceals or absents himself or herself from release supervision, the panel may declare him or her an absconder and request that a warrant be issued.

D. After supervised release, the panel receives the following reports and information:

(1) progress reports prepared by

the JPO, assessing the progress of the juvenile; or

(2) reports of supervised release violations.

[8.14.7.12 NMAC - N, 7/16/2009]

8.14.7.13 VIOLATIONS OF SUPERVISED RELEASE CONDITIONS:

The JPO informs the panel when a juvenile is alleged to have violated any general or special conditions of supervised release. The JPO and a designated departmental representative of the panel confer regarding the appropriate course of action in each circumstance. Supervised release shall only be revoked and the juvenile placed in detention if it is necessary to protect the public safety, prevent self-injury, facilitate transfer, or ensure the presence of the juvenile at subsequent court hearings.

A. After consultation, there may be a decision to allow the juvenile to continue on supervised release. The JPO's monthly report to the panel will document the justification for the decision to continue supervised release.

B. The panel may issue a reprimand for any supervised release violation, upon recommendation of the department or upon its own initiative when appropriate. The reprimand may be oral or written. Reprimands may be issued during a supervised release revocation proceeding if the panel has decided, after a preliminary supervised release violation inquiry or final supervised release violation hearing, not to revoke supervised release.

C. The panel may modify the release agreement to address less serious violations for which supervised release revocation proceedings are not immediately appropriate.

D. If after consulting with the panel, there is a decision to begin revocation proceedings against the juvenile, a preliminary supervised release violation report is prepared.

[8.14.7.13 NMAC - N, 7/16/2009]

8.14.7.14 SUPERVISED RELEASE REVOCATIONS

A. Preliminary supervised release violation hearing. The purpose of the hearing is to determine whether there is probable cause (through a fact-finding process) to conduct a final supervised release violation hearing. The hearing shall be before an impartial hearing examiner appointed by the department.

B. Prior to initiating a preliminary hearing based upon alleged violations of release conditions which are a manifestation of the juvenile's disability, there must be a written finding that mental health services in the community that are available and appropriate to deal with the juvenile's

mental disabilities were ineffective.

C. The department conducts the preliminary supervised release violation hearing. The juvenile's JPO provides the following information to the department's hearing examiner prior to the preliminary release violation hearing:

(1) notice of preliminary release violation hearing;

(2) release violation report; and

(3) notice of rights.

D. If there is a finding of probable cause at the preliminary supervised release violation hearing, a retake warrant is issued. The juvenile is returned to the facility from which he or she was released pending the final violation hearing before the panel. The hearing examiner sends the panel a copy of the supervised release violation report and the testimony, facts and conclusions, with the retake warrant, within ten days of the preliminary supervised release violation hearing. The hearing examiner may make recommendations for the panel's consideration at the final violation hearing.

E. If the hearing examiner does not find probable cause at the preliminary supervised release violation hearing, the juvenile is released and continues supervised release on the terms of the release agreement, including any modifications that have been approved by the panel. A report is submitted to the panel within ten (10) working days of the preliminary supervised release violation hearing.

F. Final supervised release violation hearing.

(1) The final supervised release violation hearing is conducted by the panel. The panel makes the final determination whether to continue the supervised release or whether and how to modify the terms of the supervised release agreement.

(2) A final supervised release violation hearing will be held within ninety days from the date the department retakes custody of the juvenile. The panel can make reasonable exceptions to this rule for good cause.

(3) The panel requests the New Mexico public defender department to represent the juvenile, unless a private attorney is secured by the juvenile.

(4) The panel notifies the juvenile, the juvenile's parent or guardian, and the juvenile's attorney of the hearing date at least ten working days in advance.

(5) The panel may consider and grant requests for postponement or continuance from the juvenile or attorney; time limits will be adjusted accordingly.

(6) The juvenile cannot re-litigate issues determined in the preliminary supervised release violation hearing.

(7) At the final supervised release

violation hearing, the juvenile is entitled to the following:

(a) right to silence;

(b) right to an attorney;

(c) right to present evidence and witnesses;

(d) right to confront and cross-examine adverse witnesses (except where the panel determines, in writing, that the witnesses are in danger of harm or there is other good cause for not allowing confrontations);

(e) right to be informed of the evidence against him;

(f) right to a neutral hearing panel; and

(g) right to a written statement by the panel of the reasons for revoking supervised release.

(8) The panel's chairperson grants permission to call witnesses not heard at the preliminary supervised release violation hearing. Such requests may be made by either the juvenile or by panel members.

(9) The panel's chairperson determines the admissibility of evidence. Judicial rules of evidence shall not apply.

(10) All materials admitted in the preliminary supervised release violation hearing are admitted at the final violation hearing.

(11) The panel may accept or reject the hearing examiner's preliminary revocation recommendations and may enter any other disposition it deems appropriate.

(12) After the hearing is concluded, the panel presents its decision to the juvenile, attorney, parents, guardians or custodians.

(13) If supervised release is revoked, the juvenile is remanded to the custody of the juvenile facility.

(14) If the violated conditions of supervised release resulted from the commission of a new delinquent offense or criminal act, the juvenile will not be re-scheduled for a supervised release hearing.

(15) If supervised release is revoked and the juvenile is re-released in the same action, the juvenile will be required to abide by all original or modified conditions of supervised release. This new release date will be determined by the panel. The institution shall conduct a re-release orientation.

(16) The final supervised release violation hearing is electronically recorded. [8.14.7.14 NMAC - N, 7/16/2009]

8.14.7.15 RELEASE AND FACILITY DISCHARGE PROCEDURES

A. JPO request for discharge from supervised release: If the juvenile's JPO determines that a juvenile on supervised release has exhibited behavior

that warrants early discharge, and the juvenile is not in a mandatory supervised release period, the JPO may request early discharge and prepare a supervision summary report. Any such report shall be submitted to the panel at least thirty days prior to the requested early discharge date. The report shall include a detailed supervision history setting forth the juvenile's performance on supervised release, and the reasons why the JPO is recommending early discharge.

B. Facility request for discharge from commitment.

(1) The facility shall request a discharge from the facility or department when the juvenile's commitment is expiring, whether the juvenile is on supervised release or in the facility. The facility submits a discharge notification to the panel at least thirty days prior to the juvenile offender's custody expiration date.

(2) Facility requests for discharge to take effect prior to the juvenile offender's custody expiration date shall be placed on the regular or special meetings agenda.

C. Types of discharges. The following types of discharges may be made:

(1) Administrative discharge: The panel issues an administrative discharge on the juvenile's supervised release or commitment expiration date.

(2) Unsatisfactory discharge: The panel issues an unsatisfactory discharge when and if:

(a) an absconder is over age 18, is a non-violent offender, three months have elapsed since the original custody expiration date, and the JPO is recommending a discharge;

(b) the juvenile has been placed on adult probation;

(c) the juvenile has been sentenced to a new commitment to a juvenile facility; or

(d) the juvenile has been sentenced to a commitment to a state or federal prison.

(3) Technical discharge: The panel shall issue a technical discharge when and if:

(a) the juvenile offender dies;

(b) the juvenile offender has been recommended for residential treatment pursuant to the Children's Mental Health and Developmental Disabilities Act, 1978 NMSA Section 32A-6A-1 et. seq., and it is expected that he or she will remain so committed until his or her custody expiration date; or

(c) the juvenile's commitment to a department facility is otherwise completed or terminated through a process other than expiration of the original term or through an unsatisfactory discharge.

D. The panel chairperson may grant an administrative discharge,

including an unsatisfactory or technical discharge, without convening a full release panel.

E. Once the panel determines what type of discharge to issue, a certificate of discharge is given to the juvenile and a copy inserted into the juvenile's file. All victim notifications are completed in accordance with Section 31-26-12 (D) NMSA 1978.

[8.14.7.15 NMAC - N, 7/16/2009]

HISTORY OF 8.14.7 NMAC:
[RESERVED]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.50 NMAC, sections 6, 8, 10, 14 and 15, effective July 16, 2009.

5.5.50.6 OBJECTIVE: The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. The JTIP program, also known as the Industrial Training Development Program or "in plant training," strengthens New Mexico's economy by providing financial incentives to companies that create new economic-based jobs in New Mexico. Training funded by JTIP also elevates the skill level of the New Mexico residents who fill funded positions. Since the program's inception in 1972, more than ~~800~~ 973 companies and ~~40,000~~ 47,676 New Mexico workers have benefited from the program. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves. Eligibility requirements, which are highlighted below, are explained in more detail in the body of this manual. Reference can also be made to the enabling legislation (Section 21-19-7, NMSA 1978 and subsequent amendments).

A. Company eligibility: Three categories of companies are eligible to be considered for JTIP funds. The first category is companies which manufacture a product in New Mexico. Renewable power generators and film post-production companies are eligible under the manufacturing category. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico; unless the company is considered a green industry. To be considered for JTIP, non-retail service companies must export a service rather than import a customer. The third category -film

production companies - are regulated elsewhere. The company must be creating new jobs as a result of expansion, startup, or relocation to the state of New Mexico. Companies that have been funded previously by JTIP must have at least as many total employees as when they last expanded under JTIP. For a more complete explanation of expansion requirements, refer to "company qualifications and requirements" in 5.5.50.8 NMAC. Financial strength is also a consideration in funding decisions. The company should be financially stable to ensure long-term employment for JTIP participants.

B. Job eligibility: Jobs eligible for funding through JTIP must be newly created jobs, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to 10% of the total number of jobs applied for in the proposal. Jobs must also meet a wage requirement to be eligible for funding. For contract-based call centers, the position must meet or exceed at least 90% of the county median wage to qualify in urban locations and \$8.50 in rural locations. The entry level wage requirements for JTIP eligibility are specified in the chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit. An additional incentive is offered for these jobs. In urban areas, companies which apply for more than 20 positions must offer health insurance coverage to employees and their dependents and pay at least 50% of the premium for employees who elect coverage.

C. Trainee eligibility: To be eligible for JTIP, trainees must be new hires to the company, must have been residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, must be domiciled in New Mexico (domicile is your permanent home; it is a place to which a person returns after a temporary absence) during employment, and must be of legal status for employment. Trainees must not have left a public school program in the three months prior to employment, unless they graduated or completed a GED.

D. Reimbursable training costs: Training funded through JTIP can be custom classroom training at a New Mexico post-secondary public educational institution, structured on-the-job training at

the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide "quick response" training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a) A ~~significant~~ portion of trainee wages [~~50%~~] up to 75% for up to six months of initial training).

(b) A ~~significant~~ portion of the cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(c) A portion of approved travel expenses [~~50%~~] up to 75% with a cap of 5% of total funding for wages.

(2) Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit are eligible for an additional 5% wage reimbursement above the standard rates.

(3) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed 100%.

E. Program management and administration: General management of the Job Training Incentive Program is the responsibility of the job training incentive program board as prescribed by governing legislation (Section 21-19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program's management and operation. The board shall provide review and oversight to assure that funds expended will generate business activity and give measurable growth to the economic base of New Mexico throughout the year. The board has the authority to make funding decisions based on the availability of funds, sufficient appropriations, and the board's determination of the qualifications of the business. The board has adopted this policy manual to ensure the program supports the development of New Mexico's economy as intended by the governing legislation. Policies and procedures for the New Mexico enhanced skilled training program, STEP UP, are outlined in a separate document. The JTIP board meets the second Friday of every month to consider proposals for funding. The third Friday of the month serves as an alternate date when required. Administration of the Job Training Incentive Program is the responsibility of the JTIP staff in the New Mexico economic development department. One copy of a proposal for funding is due to the JTIP staff one month before the board meeting at which the proposal will be considered. Once staff has reviewed the proposal for accuracy and completeness, ten copies will be requested for distribution to the board approximately two weeks prior to the meeting.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009]

5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:

A. Company qualifications and requirements: The following requirements have been instituted to ensure that companies applying for JTIP funds meet the qualifications established by legislation.

(1) Two categories of companies are eligible to be considered for JTIP funds: companies which manufacture a product in New Mexico and certain non-retail service providers. The first category is companies which manufacture a product in New Mexico. Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production, in which raw materials are transformed into finished goods on a large scale, is one example. Assembly and installation on the customer premises is excluded, unless the company and jobs exist for the sole purpose of producing or installing environmentally sustainable products (see green industries definition). Manufacturing businesses are typically included in Sectors 31-33 of the North American industry classification system (NAICS). Renewable power generators and film post production companies are eligible under the manufacturing category. A company whose employees are compensated solely on piecework is also not eligible. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. Non-retail service businesses are only eligible when they export a product or service rather than import a customer. Companies that derive their revenues from within New Mexico or via face-to-face customer interaction at the company site or customer site are not eligible, unless they exist for the sole purpose of producing, installing or integrating environmentally sustainable products. Service companies which contract with government agencies outside the state may be considered provided they can demonstrate that they are bringing new revenues and new jobs into the state through contracts which support national or multi-state entities. JTIP will not consider contractors which rely on income that is already in the state of New Mexico. One category of non-retail service providers is customer support centers. To be eligible for JTIP funding, the customer support center must service a customer who is not physically present at the facility, with a minimum of 50% of revenue coming from a customer base outside the state of New

Mexico. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions which require outbound sales, solicitation, or telemarketing are not eligible for JTIP funds. Contract-based call centers have special wage requirements. Contract-based call centers are outsourcing vendors which provide information to customers of their clients on behalf of those clients. Contract-based call centers do not have a core expertise; rather they communicate information provided to them by their clients. For contract-based call centers, the positions must meet or exceed at least 90% of the county median to qualify in urban locations and pay at least \$8.50 in rural areas. Distribution is another category of non-retail business service providers. A distributor is the middleman between the manufacturer and the retailers. After a ~~product~~ product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer, or customer. Distributors qualify for JTIP as service providers if at least 50% of the customer base is located outside of New Mexico. Headquarter facilities which are considered shared services centers are also eligible. Businesses which are not eligible include but are not limited to retail, construction, mining, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). The board uses the north American industry classification system (NAICS) as a general guideline to establish industry classification.

(2) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. Start-up companies are also eligible, provided they are producing a saleable product and are beyond the initial research and development or prototype phase. An expanding company is defined as an existing business which requires additional employees or workforce due to a market or product expansion. For first-time applicants, eligibility as an expanding company is determined by peak employment over the three prior years. The company must meet or exceed the average employment level for the past three years in order to be considered an expanding company and eligible for JTIP. For companies which have been funded by the program previously, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels.

(3) If a company hires twenty or more trainees in a municipality with a pop-

ulation of more than forty thousand according to the most recent decennial census or in a class A county (Los Alamos), the company must offer its employees and their dependents health insurance coverage that is in compliance with the NM Insurance Code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage.

(4) Companies are required to submit three years of financial statements (profit and loss and balance sheets) as part of the application process. Year-to-date financials may also be requested. Start-up companies which do not have three years of financials ~~may~~ must submit financials for the period for which they are available, evidence of operating capital and investment funding, a business plan, evidence of signed contracts, or pro forma financial statements which would substantiate their business expansion. Start-up companies must be producing a saleable product and may not be in the initial research and development or prototype phase.

(5) Training programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

(6) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within 1 year of the completion of training, the JTIP board will require the refund of the funds associated with any JTIP trainee(s) which were claimed and subsequently laid-off. The board will require a refund of funds from companies whose JTIP lay-offs exceeds \$100,000 of reimbursement. The board will require a refund of funds within 90 days of notification.

(7) Layoff is defined as a separation of an employee from an establishment that is initiated by the employer as a result of market forces or other factors not related to employee performance.

(8) If a JTIP eligible trainee is laid-off during the training period and is subsequently rehired, within four months by the same employer, the trainee can be treated as a new hire and thus remains eligible for JTIP.

B. Position qualifications and requirements: The following qualifi-

cations have been established to ensure that the positions for which funding is requested meet legislative requirements.

(1) Positions must be full-time (at least 32 hours/week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract positions are not eligible for JTIP funds.

(2) Trainer wages are not eligible for JTIP funds.

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which qualifies for the high wage job tax credit. These levels are \$40,000 in a municipality with a population of 40,000 or more as of the last decennial census and \$28,000 in other locations. Communities defined as urban for JTIP include Albuquerque, Las Cruces, Rio Rancho, Roswell, and Santa Fe. Los Alamos is also treated as an urban community.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. Positions eligible under JTIP must directly support the primary mission of the business. In addition, other newly created positions may be funded up to a maximum of 10% of the total number of jobs for which funding is requested.

C. Trainee qualifications and requirements: The company has the exclusive decision in the selection of trainees. Trainees are expected to meet company standards on attendance, performance, and other personnel policies. All trainees must be hired within six months of the contract start date. The following qualifications have been established to ensure that the trainees for which funding is requested meet legislative requirements.

(1) Trainees must be new hires. No retraining of current company employees is allowed under the JTIP program. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

(2) Trainees ~~hired after April 8, 2005~~ must have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training.

(3) Trainees must be of legal status for employment.

(4) Trainees shall not have terminated a public school program except by graduation or GED certification within the three months prior to beginning training.

(5) Trainees who have participated in a previous JTIP or Industrial Development Training Program are not eligible to participate again with the same company.

(6) Trainees who are majority owners or relatives of majority owners of the company are not eligible to participate

in JTIP.

(7) Trainee job classifications should remain fixed during the program. However, promotions may be allowed during the training period to another position in the contract as long as the pay remains at least equal to the previous job. JTIP staff should be notified within 15 days of the promotion if the company wishes to be reimbursed for the employee's training.

(8) Trainees' start dates must occur after the actual contract date.

(9) Employees hired through a temporary agency may be eligible for funding provided the following conditions are met.

(a) The trainee must be hired by the company as a permanent full-time employee before the end of the JTIP approved training hours.

(b) The trainee must receive the same wages and major medical, dental, and vision benefits while working as a temporary employee that permanent employees of the company receive.

(c) The staffing agency must disclose wages paid to the temporary employee to the company.

(d) The amount of reimbursement during the temporary period will be the actual wage paid to the employee and will not include extra fees paid to the staffing agency.

(10) Companies are reimbursed for wages as each trainee completes the approved training hours.

(11) If a trainee leaves the company before completing training, the company is not eligible for any reimbursement for that employee. If another trainee can be hired in that position and complete training before the contract end date, a claim can be submitted for the successful trainee.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009]

5.5.50.10 REIMBURSABLE EXPENSES:

A. The following expenses are eligible for reimbursement through JTIP

(1) A ~~significant~~ percentage of trainee wages ~~[(50%)]~~ up to 80% for up to six months of initial training[)].

(2) A percentage of travel expenses associated with training ~~[(50%)]~~ up to 75%[)].

(3) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a maximum of \$35 per hour of training per trainee and a cap of \$1,000 per employee.

B. Standard reimbursement rates for wages and travel range ~~from 50%~~ up to 75%. Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit are also eligible

for an additional 5% wage reimbursement. If a company is participating in other job reimbursement training programs such as the Workforce Investment Act (WIA), the combined reimbursement to the company may not exceed 100%.

C. The Job Training Incentive Program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position and complete training before the contract end date, a claim can be submitted for the successful trainee.

D. Wage reimbursement:

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of reimbursement ranges [~~from 50%~~] up to 75%, depending on the business location. An additional 5% may be awarded for jobs which also qualify for the high wage job tax credit.

(2) The number of hours eligible for reimbursement varies by position, up to 1040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O*NET (occupational information network) job zone classification for the O*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O*NET system, sponsored by the US department of labor, is available at <http://onetcenter.org>. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. The number of recommended hours is included in the table below.

General Guideline for Duration of Reimbursable Training Time/Wages							
Job Zone	Definitions	SVP Range/Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	160	9.00	8.00	20	4
1a	Little or no preparation needed	Below 4.0	320	10.00	8.50	40	8
2	Some preparation needed	4.0 to < 6.0	480	11.50	9.00	60	12
2a	Some preparation needed	4.0 to < 6.0	640	13.00	9.50	80	16
3	Medium preparation needed	6.0 to < 7.0	800	14.50	11.00	100	20
3a	Medium preparation needed	6.0 to < 7.0	960	16.00	12.00	120	24
4	Considerable preparation needed	7.0 to < 8.0	1040	19.00	13.00	130	26
	Align with HWJTC	Additional 5%	1040	19.25	13.50	130	26

(3) The JTIP [~~board~~] staff will ensure that the O*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board [~~awards~~] may award training hours based on the O*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the table above. If a company establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O*NET recommended hours. Generally, the hours are reduced to the hours allowed for the next lower job zone. The reimbursement percentages may be adjusted at the discretion of the board based on availability of funds or sufficient appropriations.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, frontier, economically distressed, and Native American land.

(a) Businesses in urban locations (cities with population above 40,000 in the most recent decennial census) and Class A counties (i.e., Los Alamos) are reimbursed at up to 50% for all eligible training hours. Urban communities are: Albuquerque (448,607), Las Cruces (74,267), Rio Rancho (51,765), Roswell (45,293), and Santa Fe (62,203).

(b) Companies located in rural areas, which is defined as any area 10 miles outside the urban areas listed above are reimbursed at up to 65% for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at up to 70% for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to 75% reimbursement. To receive a 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a com-

bination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

(e) Companies located on Native American reservations are eligible for up to 75% reimbursement.

(6) JTIP eligible positions which meet the requirements of the high wage job tax credit are eligible for an additional 5% reimbursement. These requirements are a hiring salary of \$40,000 or higher in an urban or class A county and a hiring salary of \$28,000 or higher in a rural location or economically disadvantaged area. Reimbursement for positions which meet these requirements is up to 55% in an urban location, up to 70% in a rural location, up to 75% in frontier, and up to 80% in an economically distressed area and on Native American land. Trainee requirements (New Mexico residency for one year, new hire status, etc.) are still factors for JTIP eligibility.

(7) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed one thousand and forty (1,040) hours per trainee (six months) based on the company's scheduled workweek, not to exceed forty (40) hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, and stock options are not eligible for reimbursement.

(c) If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d) Any training hours that exceed the contracted amount are the responsibility of the company.

(e) If a company is participating in other job reimbursement training programs such as WIA, the combined reimbursement to the company may not exceed 100%.

E. Reimbursement for custom classroom training: Payment for custom classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of \$35 per hour per trainee with a cap of \$1,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, fringe benefits, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. *No training equipment may be purchased or rented using JTIP funds.*

F. Travel cost and per

diem reimbursement for trainees and trainers: Trainee travel and per diem may be included in the proposal when trainees are required to travel to a different location for training. Travel expenses may also be included if a trainer is required to travel to New Mexico to conduct training. Reimbursement for travel and per diem will be consistent with the rates as designated by location (up to 50% for urban, up to 65% for rural, up to 70% for frontier, and up to 75% for economically distressed and Native American areas). Travel and per diem must be pursuant to 2.42.2 NMAC of the department of finance and administration's regulations governing the Per Diem and Mileage Act. Total travel cost is not to exceed five (5%) of the amount requested for wages.

[5.5.50.10 NMAC - Rp, 5.5.50.10 & 11 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009]

5.5.50.14 CONTACTING JTIP

STAFF: JTIP staff can be contacted at the New Mexico economic development department in Santa Fe. The general phone numbers for the department are (505) 827-0300 or (800) 374-3061.

A. The mailing address for all JTIP reimbursement forms is:
Job Training Incentive Program
Program Administrator
New Mexico Economic Development Department
P. O. Box 20003
Santa Fe, NM 87504-5003

B. The physical address to be used for federal express or special handling packages is:
Job Training Incentive Program
Program Administrator
New Mexico Economic Development Department
Joseph M. Montoya Bldg., Suite 1060
1100 St. Francis Drive
Santa Fe, NM 87505-4147

[5.5.50.14 NMAC - Rp, 5.5.50.11 NMAC, 03-15-2006; A, 07-16-2009]

5.5.50.15 GLOSSARY:

A. Agriculture/mining/extractive industries: Companies classified in agriculture, mining, and extractive by the North American industry classification system (NAICS) are not eligible for JTIP.

B. Company: A company is a corporation, or less commonly, an association partnership or union that carries on a commercial or industrial enterprise. Generally, a company may be a corporation, partnership, association, joint-stock company, or organized group of persons, whether incorporated or not, and (in an official capacity), legally recognized organizational entity designed to provide goods or services to consumers or corporate entities such as

governments, charities, or other businesses.

C. Economically distressed areas: Companies located in an economically distressed area in New Mexico are eligible for 75% reimbursement. To receive a 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

D. Expanding company: An expanding company is an existing business which requires additional employees or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the three prior years. (Refer to "peak employment.")

E. Film and multimedia post production: Film post-production is considered manufacturing provided the company is primarily engaged in any of the following: animation, editing, Foley recording, automatic dialogue replacement, sound editing, special effects (including computer generated imagery or other effects), scoring, and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Production jobs must be full-time and qualifying trainees must be employed year round. Position must not require trainee to complete product on filming location. Trainee may not be directly employed by the client company at any time.

F. Frontier: A frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.

G. Green industries: Those that exist for the sole purpose of contributing directly to preserving or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries may include: energy system retrofits to increase energy efficiency and conservation; production and distribution of biofuels and vehicle retrofits for biofuels; building design and construction that meet the equivalent of best available technology in energy and environmental design standards; organic and community food production; manufacture of products from non-toxic, environmentally certified or recycled materials; manufacture and

production of sustainable technologies, including solar panels, wind turbines and fuel cells; solar technology installation and maintenance; recycling, green composting and large-scale reuse of construction and demolition materials and debris; and water system retrofits to increase water efficiency and conservation.

[G] H. High wage job tax credit: The high wage job tax credit provides a tax credit of 10% of the wages and benefits paid for each new economic-based job created on or after July 1, 2004 and before July 1, 2009, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$28,000/year in a community with a population of less than 40,000 and \$40,000/year in a community with a population of 40,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee.

[H] I. Manufacturing: Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production in which raw materials are transformed into finished goods on a large scale is one example. Assembly and installation on the premises of the customer is not included as manufacturing. Manufacturing businesses are typically included in Sectors 31-33 of NAICS. Manufacturing is defined at Section 7-4-10B NMSA 1978 as "combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include: (1) construction; (2) farming; (3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or (4) processing natural resources, including hydrocarbons."

[I] J. NAICS: North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive system covers the entire field of economic activities, producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at www.census.gov/epcd/naics02/naicod02.htm.

[J] K. Native American crafts: Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of

Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

[K] L. New company: A new company is defined as a company not currently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID and a New Mexico unemployment insurance ID when applying for JTIP funds.

[L] M. Non-retail service sector business: To be considered for JTIP funding, the company must provide services which are not retail in nature and must export 50% of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies must export a service rather than import a customer.

[M] N. O*NET: The occupational information network - O*NET database takes the place of the dictionary of occupational titles (DOT) as the nation's primary source of occupational information. The number of training hours for which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O*NET. The O*NET database is available at www.onetcenter.org.

[N] O. Peak employment: First time JTIP applicants: Peak employment will be based on the employment average from three previous years or the present employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

[O] P. Peak employment: Previous JTIP participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the board may utilize the state of New Mexico unemployment insurance (UI) report for the last three years to determine peak employment at the time of reapplication to ensure an expansion is indeed occurring.

[P] Q. Retail trade: Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise. Retailers operate fixed point-of-sale loca-

tions, located and designed to attract a high volume of walk-in customers.

[Q] R. Southwestern arts and crafts: Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

[R] S. Urban communities: An urban community is defined as a municipality with a population of forty thousand or more according to the most recent federal decennial census. Those communities are: Albuquerque (448,607), Las Cruces (74,267), Rio Rancho (51,765), Roswell (45,293), and Santa Fe (62,203). Class A counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

[S] T. Metropolitan statistical area: An MSA is a statistical standard designated and defined by the U.S. department of commerce, office of federal statistical policy and standards (OFSPS). MSA's are designated so that governmental agencies will use a common geographical classification in the production of data on metropolitan areas in the nation. The general concept of an MSA is one of a large population nucleus, together with any adjacent communities which have a high degree of economic and social integration with that nucleus. In New Mexico there are four MSA's. Albuquerque MSA includes Bernalillo, Sandoval, Valencia, and Torrance counties. Santa Fe MSA includes Santa Fe county. Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

[T] U. Rural: Any area located 10 miles or more outside communities defined as urban in the JTIP policy. [5.5.50.15 NMAC - Rp, 5.5.50.13 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009]

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT**
ENERGY CONSERVATION AND
MANAGEMENT DIVISION

This is an amendment to 3.3.28 NMAC Sections 7, 9, 11, 12, 13, 17, 19, and 20, effective 7-16-09.

3.3.28.7 DEFINITIONS:

A. "Applicant" means a New Mexico taxpayer that has installed a solar energy system and that desires to have the department certify the solar energy system pursuant to 3.3.28 NMAC so that the taxpayer may receive a state tax credit.

B. "Application package" means the application documents an applicant submits to the division for certification to receive a state tax credit.

C. "Array" means the collectors of a solar thermal system or the modules of a photovoltaic system.

D. "Balance of system" means portions of a solar energy system other than the array.

E. "Building code authority" means the New Mexico regulation and licensing department, construction industries division or the local government agency having jurisdiction for building, electrical and mechanical codes.

F. "Certified" or "certification" means department approval of a solar energy system, which makes the taxpayer owning the system eligible for a state tax credit.

G. "Collector" means the solar thermal system component that absorbs solar energy for conversion into heat.

H. "Collector aperture" means the area of a solar thermal collector that absorbs solar energy for conversion into usable heat.

I. "Component" means a solar energy system's equipment and materials.

J. "Department" means the energy, minerals and natural resources department.

K. "Division" means the department's energy conservation and management division.

L. "Energy system" means an engineered system that delivers solar energy to an end use by flow of fluid or electricity caused by energized components such as pumps, fans, inverters or controllers.

~~**M.** "Federal tax credit" means an income tax credit the United States government issues to a taxpayer for a solar energy system that meets United~~

~~States government requirements.~~

~~**N; M.** "Homeowner" means a taxpayer that may obtain a permit limited to construction of single-family dwellings, private garages, carports, sheds, agricultural buildings and fences.~~

~~**O; N.** "Innovative" means an alternative method or material that is not commercialized for use in a solar energy system.~~

~~**P; Q.** "Install" or "installation" means the direct work of placing a solar energy system into service to operate and produce energy at the expected level for a system of its size.~~

~~**Q; P.** "Interconnection" means connection of a photovoltaic system that an electric utility customer operates to that utility's distribution grid system.~~

~~**R; Q.** "Interconnection agreement" means an agreement allowing the applicant to interconnect a solar energy system of a specified type and size to a suitable electric transmission or distribution line.~~

~~**S; R.** "Module" means the photovoltaic system component that absorbs sunlight for conversion into electricity.~~

~~**T; S.** "New" means the condition of being recently manufactured and not used previously in any installation.~~

~~**U; T.** "Non-residential" means a business or agricultural enterprise.~~

~~**V; U.** "OG" means operating guidelines that the solar rating and certification corporation has or will establish, including system performance or component characteristics the SRCC defines in its directory. Operating guidelines shall be from the directory in effect on July 1, 2006 and all successive revisions.~~

~~**W; V.** "Photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity.~~

~~**X; W.** "Portable" means not permanently connected to a residence, business or agricultural enterprise or connected to a mobile vehicle that is a part of a residence, business or agricultural enterprise.~~

~~**Y; X.** "Solar collector" means a solar thermal collector or photovoltaic module.~~

~~**Z; Y.** "Solar market development tax credit" means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.~~

~~**AA; Z.** "Solar energy system" means a solar thermal system or photovoltaic system.~~

~~**BB; AA.** "Solar storage tank" means a tank provided as a component in a solar thermal system that is not heated by electricity or a heating fuel.~~

~~**CC; BB.** "Solar thermal system" means an energy system that~~

collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

~~**DD; CC.** "S R C C" means the solar rating and certification corporation.~~

~~**EE; DD.** "Standard test conditions" means the environmental conditions under which a manufacturer tests a photovoltaic module for power output, which are a photovoltaic cell temperature of 25 degrees celsius and solar insolation of 1000 watts per square meter on the photovoltaic cell surface.~~

~~**FF; EE.** "State tax credit" means the solar market development tax credit.~~

~~**GG.** "Tax credits difference" means the federal tax credit subtracted from 30 percent of the net solar energy system cost.]~~

~~**HH.** "Tax credits sum" means the sum of the state tax credit and the federal tax credit.]~~

~~**I; FF.** "Taxpayer" means the owner of a solar energy system and the residence, business or agricultural enterprise where the solar energy system is located who applies for certification of an operating solar energy system in order to receive a state tax credit.~~

~~[3.3.28.7 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]~~

3.3.28.9 APPLICATION:

A. To apply for a state tax credit an applicant shall submit an application package to the division. An applicant may obtain a state tax credit application form and system installation form from the division.

B. An application package shall include a completed state tax credit application form and written attachments for a solar thermal system or photovoltaic system. The applicant shall submit the state tax credit application form and any attachments required at the same time as a complete application package. An applicant shall submit one application package for each solar energy system. All material submitted in the application package shall be capable of being provided on 8½-inch x 11-inch paper.

~~**C.** An applicant shall submit an application package to the division no later than February 15 of the calendar year immediately following the taxable year in which the taxpayer seeks the state tax credit to assure time for certification to be applied to that taxable year. The division shall not accept application packages after February 15 of the calendar year immediately following the last taxable year that the state tax credit is available. If in a given year the February 15 due date occurs on a day when the department is closed for busi-~~

~~ness, the due date shall be the next day that the department is open for business.]~~

~~[D.] C.~~ The application package shall meet 3.3.28 NMAC's requirements. If an application package fails to meet a requirement, the department shall disapprove the application.

~~[E.] D.~~ The completed application form shall consist of the following information:

(1) the taxpayer's name, mailing address, telephone number and social security number;

(2) the address where the solar energy system is located, if located at a residence, business or agricultural facility or, a location description if located at an agricultural enterprise;

(3) the solar energy system's type and description;

(4) the date the solar energy system started continuous operation or that an upgrade to an existing system became operational, if applicable;

(5) if a contractor installed the solar energy system, the contractor's name, address, telephone number, license category and license number;

(6) acknowledgement that the homeowner installed the solar energy system; if applicable;

(7) the net cost of equipment, materials and labor of the solar energy system, excluding the expenses and income listed in 3.3.28 NMAC;

(8) a statement that the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge;

(b) applicant has read the certification requirements contained in 3.3.28 NMAC;

(c) applicant understands that there are annual aggregate state tax credit limits in place for solar thermal systems and photovoltaic systems;

(d) applicant understands that the department must certify the solar energy system documented in the application package before becoming eligible for a state tax credit;

(e) applicant agrees to make any changes the department requires to the solar energy system for compliance with 3.3.28 NMAC;

~~[(f) applicant agrees to operate the solar energy system for a minimum of five years after department certification or, if the residential, business or agricultural enterprise where the solar energy system is located is sold or transferred to another party within five years after the department's certification of the solar energy system, the~~

~~sale or transfer agreement shall require the solar energy system's continued operation or maintenance for energy production for no less than the balance of the five year period remaining;~~

~~[(g) applicant agrees to provide for the solar energy system's regular maintenance for a minimum of five years with the applicant's own resources or through a contractor;] and~~

~~[(h)] (f) to ensure compliance with 3.3.28 NMAC~~ applicant agrees to allow the division or its authorized representative to inspect the solar energy system that is described in the application package at any time from the application package's submittal to three years after the department has certified the solar energy system, upon the division providing a minimum of five days notice to the applicant, and;

(9) a project number the division assigns to the application.

~~[F.] E.~~ The application form shall request the following as optional information provided by the applicant:

- (1) taxpayer's email address; and
- (2) contractor's email address.

~~[G.] E.~~ The application form shall include optional selections where the applicant can indicate interest in allowing the department to take the following actions:

- (1) adding energy monitoring equipment to the solar energy system;
- (2) conducting an analysis of solar energy system operation and performance; or
- (3) conducting an analysis of taxpayer's utility bill records.

~~[H.] G.~~ The application package shall consist of the following information provided as attachments:

(1) a copy of a current property tax bill to the taxpayer for the residence, business or agricultural enterprise where the solar energy system is located;

(2) a copy of the invoice of itemized equipment and labor costs for the solar energy system;

(3) a copy of the solar energy system's design schematic and technical specifications as described in 3.3.28 NMAC;

(4) a photographic record of the solar energy system after installation is completed;

(5) a completed system installation form;

~~[(6)] (g)~~ a completed taxpayer and contractor statement of understanding that shall include 3.3.28.19 NMAC;

~~[(6)] (7)~~ if application is for a solar thermal system, ~~[include on design schematic attachment or as separate attachments]~~ a completed solar thermal list form that includes the:

- (a) manufacturer or supplier of

system components and their model numbers;

(b) number of collectors;

(c) collector aperture dimensions;

(d) orientation of collectors by providing the azimuth angle from true south and tilt angle from horizontal;

(e) SRCC solar collector certification identification number or, if SRCC has not certified the collector and the application package is submitted on January 1, 2007 or later but before January 1, 2010, a copy of the application for solar collector certification form the manufacturer has submitted to the SRCC and report status of SRCC certification process;

(f) a description of the freeze protection;

(g) a description of overheating protection;

(h) thermal storage fluid or material and its volume, if thermal storage is a part of the system and if the thermal storage does not have energy provided from a non-solar or non-renewable source; and

(i) manufacturer's specifications for collectors, if collectors are unglazed;

~~[(7)] (8)~~ if application is for a photovoltaic system, ~~[include with design schematic or as separate attachments]~~ a completed solar photovoltaic list form that includes the:

(a) manufacturer or supplier of major system components and their model numbers;

(b) number of modules;

(c) module rated direct current power output in watts under manufacturer's standard test conditions;

(d) collectors' orientation by providing the azimuth angle from true south and tilt angle from horizontal;

(e) inverter capacity in kilowatts, if an inverter is a part of the system;

(f) battery storage capacity in kilowatt-hours, if battery storage is a part of the system; and

(g) a copy of the signature and specifications pages of the fully executed interconnection agreement with the electric utility if the photovoltaic system is interconnected to a utility transmission line or distribution system; and

~~[(8)] (9)~~ other information the department needs to evaluate the specific system type for certification.

~~[I.] H.~~ The completed system installation form shall include the following information:

(1) printed name of the taxpayer who is identified on the application form,

(2) printed name, title and telephone number of the contractor's authorized representative, if applicable, who approves the system installation form;

(3) printed name, title and tele-

phone number of the building code authority's authorized representative, if applicable, who approves the system installation form;

(4) date on which solar energy system installation was complete and ready to operate;

(5) if a contractor installed the solar energy system, a statement that the contractor's authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, agreeing that:

(a) the solar energy system was installed in full compliance with all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time of installation;

(b) contractor has read 3.3.28 NMAC's certification requirements;

(c) the date on which the solar energy system was ready to operate;

(d) the installed solar energy system will work properly with regular maintenance; and

(e) contractor provided written operations and maintenance instructions to the applicant and posted a one-page summary of these instructions in a sheltered accessible location acceptable to the taxpayer and which is near or at the solar energy system's array or balance of system components;

(6) a statement that the building code authority's authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, that the solar energy system was installed in full compliance with all applicable codes; and

(7) if the applicant is unable to obtain a signed and dated statement from the building code authority's authorized representative on the system installation form, then the applicant may provide one of the following instead:

(a) a photograph or copy of the permit tag clearly identifying the building code authority's authorized representative's signature, the date and the permit number;

(b) an official document from the building code authority that includes the:

(i) agency's name;

(ii) authorized representative's name, title, telephone number and signature;

(iii) date of authorized representative's signature; and

(iv) permit number; or

(c) a web-based application the building code authority approves.

[¶] L. The division shall return an incomplete application to the applicant.

[3.3.28.9 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.11 SAFETY, CODES AND STANDARDS:

A. Solar energy systems that the department may certify shall meet the following requirements:

(1) compliance with the latest adopted version of all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time that the applicant submits the application package;

(2) compliance with all applicable utility company or heating fuel vendor requirements, if the system being served with a solar energy system is also served by utility electricity or a heating fuel;

(3) compliance with the building code authority's structural design requirements, as applicable to new and existing structures upon which solar energy system components may be mounted and support structures of solar energy system components;

(4) permitted and inspected by the building code authority for building, electrical or mechanical code compliance, as applicable to the type of solar energy system installed; and

(5) a written final inspection approval obtained from the building code authority after the solar energy system's installation, as applicable to the solar energy system type, or alternative system approval as allowed by 3.3.28 NMAC.

B. The department may certify a solar energy system that a taxpayer who is also the homeowner of the residence at which the solar energy system is located has installed and shall not certify a solar energy system that the owner of a non-residential facility has installed.

C. Solar thermal systems that the department may certify shall meet the following requirements:

(1) if installed at a residence by a

(a) contractor, installation by a certified mechanical journeyman who is an employee of a company holding a valid New Mexico mechanical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision;

(b) homeowner, installation by that homeowner who has met all the building code authority's requirements for obtaining a homeowner's permit, including passing a written examination for plumbing work the building code authority administers;

(2) if installed at a non-residential facility, installation by a certified mechanical journeyman who is an employee of a company holding a New Mexico mechanical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervi-

sion; and

(3) design, permitting and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code (14.8.2 NMAC), the New Mexico Mechanical Codes (14.9.2 - 5 NMAC), Solar Energy Code 14.9.6 NMAC, the New Mexico General Construction Building Codes (14.7.2 - 8 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6.

D. Photovoltaic systems that the department may certify shall meet the following requirements:

(1) if installed at a residence by a:

(a) contractor, installation by a certified electrical journeyman who is an employee of a company holding a valid New Mexico electrical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision; or

(b) homeowner, installation by that homeowner who has met all the building code authority's requirements for obtaining a homeowner's permit, including passing a written examination for electrical work the building code authority administers;

(2) if installed at a non-residential facility, installation by a certified electrical journeyman who is an employee of a company holding a New Mexico electrical contractor license provided, however, that an apprentice may work under a validly certified journeyman's direct supervision; and

(3) design, permitting and installation in full compliance with all applicable provisions of the New Mexico Electrical Code (14.10.4 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6.

[3.3.28.11 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.12 SOLAR COLLECTOR AND MODULE ORIENTATION AND SUN EXPOSURE:

A. A solar energy system array the department certifies shall have an azimuth angle or sun exposure reduction due to shading or other factors that results in annual energy production of the total solar energy system having a combined derating of not more than 25 percent when compared to an ideal solar energy system at the same location that has an unshaded array tilt equal to local latitude and azimuth of true south. For cases in which the combined impact of orientation and sun exposure of an array is evaluated, the applicant shall estimate a derating using a department approved method or model.

~~[B.]~~ A taxpayer operating a solar energy system the department certifies shall take the following actions to control reduced energy production:

(1) maintain vegetation affecting shading of an array; and

(2) as much as practicable, monitor construction developments affecting shading of an array from adjacent structures and preserve sun exposure by complying with the Solar Rights Act's (NMSA 1978, Section 47-3-1 to 47-3-5) requirements.

~~[C.]~~ B. A tracking array of a solar energy system that the department certifies shall have a mechanism to track the sun so that the array absorber surface consistently receives the sun's direct beam at all times when the direct beam of full sun is available, without requiring manual adjustment, except for a solar energy system having the following tracking array control features:

(1) automatic and intentional stowage of the array due to high velocity wind to avoid damage to the array and its support structure;

(2) automatic and intentional adjustment to off-direct-beam array orientations at low sun angles to optimize the solar energy system's annual energy production; or

(3) other automatic and intentional array control features that demonstrate to the department's satisfaction that the solar energy system's annual energy production is optimized.

~~[D.]~~ C. A solar energy system that the department certifies shall have an array and balance of system components that are automatically controlled to collect sunlight or solar heat and deliver to an end use, without requiring manual operation.

~~[E.]~~ D. It is the applicant's sole responsibility to take action or meet the Solar Rights Act's requirements, if applicable.

[3.3.28.12 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.13 MINIMUM SYSTEM SIZES, SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

A. Solar energy systems or their portions that the department may certify shall meet the following requirements:

(1) be made of new equipment, components and materials;

(2) if installed by a contractor, have a written minimum two ~~[one]~~ year warranty provided by the contractor on parts, equipment and labor with the following exceptions;

(a) the warranty provided by the contractor on each specific piece of equipment shall not exceed the duration and conditions of the warranty provided by the

manufacturer of the equipment against defects in materials and workmanship;

(b) in the case of an expansion of an existing system, the warranty provided by the contractor shall be limited to cover only parts, equipment and labor directly related to the upgrade or expansion; and

(c) the owner of the solar energy system shall bear the actual cost of shipping the product for the repair and replacement.

(3) be a complete energy system that collects, converts and distributes solar energy to the residence, business or agricultural enterprise it serves, unless requirements are met for expansion of an existing solar energy system or replacement of an existing solar energy system's components;

(4) if an expansion of an existing solar energy system, end use annual energy production of the new system shall be increased in comparison to the existing system by the amount of the minimum system size requirement and the contractor or homeowner shall provide a written summary of the condition of each major component of the system;

(5) if replacement of one or more components of an existing system, end use annual energy production of the new system shall be increased in comparison to the system's operation under existing conditions and the contractor or homeowner shall provide a written summary of the condition of each of the system's major components; and

(6) if a specialty or retrofit component is required for a complete solar energy system, then that component shall be included as part of the solar energy system that is eligible for department certification.

B. Solar energy systems or their portions that the department shall not certify are as follows:

(1) a system or portion of a system that uses non-solar or non-renewable sources in its operation, with the exception of the following:

(a) power necessary to provide for solar energy system components' incidental electricity needs; and

(b) non-solar or non-renewable sources that do not exceed 25 percent of the system's annual energy production;

(2) a system or portion of a system that would be present if the solar energy system was not installed;

(3) a system that increases an existing residence, business or agricultural enterprise's average annual energy consumption;

(4) a system that is mobile and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(5) a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is

not permanently located in New Mexico;

(6) a system or portion of a system having one or more components not manufactured on a regular basis by a business enterprise;

(7) a system installed on a recreational vehicle;

(8) a system not serving an end use energy load; or

(9) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a state tax credit.

~~[C.]~~ The department shall maintain lists of components eligible to be included as a net solar energy system cost. The lists shall be comprised of solar energy system components the department has certified, which the division shall compile on a continuing basis through the certification program. The division may refer to existing lists of components from other independent listing or certification organizations to evaluate inclusion of components on a department list. The division may remove a previously listed component without notice if the component is not manufactured, does not comply with a code requirement, does not comply with a requirement of 3.3.28 NMAC, provides poor operational or energy performance or other reasons supported by division evaluation. The lists of components shall include the following information, if applicable:

(1) component category;

(2) component name or type;

(3) component model number;

(4) the manufacturer's name, mailing address, telephone number and email address;

(5) capacity, size or other descriptor of the component;

(6) the published operational or energy performance data of the component provided by an independent listing or certification organization or, if not available, the manufacturer;

(7) date added to list; and

(8) other information necessary to describe the component.

~~[D.]~~ C. The department may disapprove a system type, solar thermal collector type, photovoltaic module type or a solar energy system component if not listed in 3.3.28 NMAC for certification or may deem it innovative, if the applicant requests in the application package.

~~[E.]~~ D. Solar thermal systems that the department may certify include:

(1) the system applications of solar domestic hot water, solar space heating, solar air heating, solar process heating, solar space cooling or combinations of solar thermal system applications listed in 3.3.28 NMAC;

(2) the collector types of flat

plate, parabolic trough and evacuated tube; and

(3) the listed component categories of collectors, pumps, fans, solar storage tanks, expansion tanks, valves, controllers and heat exchangers.

~~[F.] E.~~ A solar thermal system component that the department may certify is a photovoltaic system providing power for a solar thermal system component's incidental electricity needs. The department shall not certify such a photovoltaic system as a separate solar energy system eligible for a separate state tax credit.

~~[G.] E.~~ Solar thermal systems or their components that the department shall not certify are as follows:

(1) a heating system or heating system components necessary for a swimming pool or a hot tub;

(2) equipment sheds, wall preparation, cabinetry, site-built enclosures, distribution piping and associated installation costs;

(3) a building design element used for passive solar space heating, space cooling, daylighting or other environmental comfort attribute;

(4) a water quality distillation or processing system;

(5) in a combined system, the portions of the system not allowed to receive a state tax credit or for which the department shall not certify the system;

(6) systems without adequate freeze protection;

(7) systems incorporating drain down as a freeze protection method; and

(8) systems without adequate overheating protection.

~~[H.] G.~~ Solar thermal systems that the department may certify shall meet the following requirements:

(1) minimum system size of 15 square feet of solar collector aperture area;

(2) for solar domestic hot water systems installed at a residence or business, a minimum of 50 percent of the total domestic water heating load provided by solar energy;

(3) a collector that is:

(a) listed as certified by the SRCC by OG-100 collector certification or OG-300 system certification processes or, if collector is not certified by the SRCC and application package is submitted on January 1, 2007 or later but before January 1, 2010, submitted by the manufacturer to the SRCC for certification and is active in the SRCC certification process;

(b) if glazed, made of all-metal enclosures, absorber plates, fasteners and fittings; aperture glazing of tempered glass; and fiberglass or polyisocyanurate insulation; or

(c) if unglazed, made of durable materials having a minimum 12 year war-

ranty period for full replacement; and

(4) all components approved by an agency accredited by the American national standards institute, if available for that specific component category.

~~[I.] H.~~ Photovoltaic systems that the department may certify include:

(1) the system applications of direct power without battery storage, utility grid interconnected without battery storage, utility grid interconnected with battery storage, stand-alone with battery storage, stand-alone with utility backup capability and water pumping;

(2) the flat plate module types of crystalline, poly-crystalline or thin-film amorphous silicon;

(3) the listed component categories of modules, inverters, batteries, manufactured battery enclosures, charge controllers, power point trackers, well pumps, racks, sun tracking mechanisms, performance monitoring equipment, communications, datalogging or lightning protection; and

(4) disconnect components, safety components, standard electrical materials and standard electrical hardware necessary for the assembly of the listed component categories into a complete, safe and fully operational system.

~~[J.] I.~~ Photovoltaic systems that the department may certify shall meet the following requirements:

(1) a minimum total array power output of 100 watts direct current at manufacturer's standard test conditions; and

(2) all components listed and labeled by a nationally recognized testing laboratory, if such listing is available for that specific component category.

~~[K.] J.~~ Photovoltaic systems or their portions that the department shall not certify are as follows:

(1) a commercial or industrial photovoltaic system other than an agricultural photovoltaic system on a farm or ranch that is not connected to an electric utility transmission or distribution system;

(2) power equipment sheds, wall preparation, cabinetry, site-built battery enclosures, distribution wiring and associated installation costs;

(3) the drilling, well casing, storage tanks, distribution piping, distribution controls and associated installation costs of a water pumping system; and

(4) a packaged product powered by photovoltaic cells that a taxpayer purchased directly from a retail business enterprise, is not custom designed, and does not require a permit from the building code authority for installation, including watches, calculators, walkway lights and toys.

[3.3.28.13 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.17 CALCULATING THE STATE TAX CREDIT:

A. A state tax credit to a taxpayer for a solar energy system the department has certified shall not exceed:

(1) ~~[30]~~ 10 percent of the net solar energy system cost as provided in 3.3.28.16 NMAC; and

(2) \$9000.

B. The total sum of the state tax credit and the federal tax credit shall not exceed ~~[30]~~ 10 percent of the net solar energy system cost.

~~[C.]~~ If a taxpayer is eligible for a federal tax credit, the amount of the federal tax credit, whether claimed or unclaimed, shall be deducted from 30 percent of the net solar energy system cost.

~~D.~~ If the department certifies a solar energy system owned by a taxpayer who is not eligible for a federal tax credit, the federal tax credit shall not be deducted from 30 percent of the net solar energy system cost.

~~E.~~ A taxpayer may receive both a state tax credit and a federal tax credit if the taxpayer is eligible for each tax credit and the state tax credit amount is greater than the federal tax credit amount.

~~F.~~ The department shall disapprove an application package if the taxpayer is eligible for a federal tax credit and the federal tax credit amount that the taxpayer may claim is equal to or greater than the state tax credit.

~~G.~~ If a taxpayer is eligible for a federal tax credit, the state tax credit shall be calculated as follows:

(1) calculate 30 percent of the net solar energy system cost;

(2) calculate the tax credits difference by subtracting the federal tax credit from 30 percent of the net solar energy system cost;

(3) if calculation of the tax credits difference is:

(a) equal to or greater than \$9000, then the state tax credit is \$9000;

(b) less than \$9000 and greater than \$0, then the state tax credit is the tax credits difference; or

(c) if less than or equal to \$0, then the state tax credit is \$0;

(4) using the state tax credit of the previous calculation, calculate the tax credits sum; and

(5) make final determination of state tax credit as follows:

(a) if the tax credits sum is equal to or less than 30 percent of the net solar energy system cost, then the state tax credit remains as last calculated; or

(b) if the tax credits sum is greater than 30 percent of the net solar energy system cost, then the state tax credit is adjusted to an amount at which the tax credits sum equals 30 percent of the net solar energy

system cost;

H. If a taxpayer is not eligible for a federal tax credit, the state tax credit shall be calculated as follows:

(1) calculate 30 percent of the net solar energy system cost;

(2) if the result of the previous calculation is

(a) equal to or greater than \$9000, then the state tax credit is \$9000; or

(b) less than \$9000, then the state tax credit is 30 percent of the net solar energy system cost.

I. The department shall make the final determination of the federal tax credit amount that a taxpayer may claim for purposes of calculating a state tax credit pursuant to 3.3.28 NMAC.

J.] C. The taxation and revenue department shall make the final determination of the amount of a state tax credit. [3.3.28.17 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.19 CONSUMER INFORMATION:

A. If a contractor installs the solar energy system, the contractor shall inform the taxpayer about system design, installation, performance, operation and maintenance by providing the following:

(1) prior to system installation, a summary of the specific system type that meets all 3.3.28 NMAC's requirements, the system's capacity or size, and the system's estimated annual energy production;

(2) upon completion of system installation, written operation and maintenance instructions, including how to conduct simple diagnostic observations and tests to determine if the solar energy system is working properly to produce energy;

(3) upon completion of system installation, a written summary of operation and maintenance instructions on one page, posted at ~~a sheltered~~ an accessible location acceptable to the taxpayer and that is near or at the solar energy system's array or balance of system components; and

(4) upon completion of system installation, written warranties in effect for equipment and contractor's labor, including their start and end dates and telephone, address and website contact information, as applicable, for honoring or extending warranties.

B. If the solar energy system is a solar thermal system, the following information shall be displayed:

(1) pump or fan status by a visual indicator, as applicable;

(2) outlet temperature of the collector loop;

(3) if a liquid collector, the collector loop's pressure; and

(4) the solar storage tank's tem-

perature, if applicable.

C. If the solar energy system is a photovoltaic system, the following information shall be displayed:

(1) for all photovoltaic systems, a visual indicator for operating status;

(2) for an electric utility interconnected system without batteries

(a) daily and cumulative energy production in kilowatt-hours alternating current of the inverter output; and

(b) instantaneous power output in kilowatts alternating current of the inverter output;

(3) for an electric utility interconnected system with batteries, a method to enable real-time evaluation of system power or energy production; and

(4) for a stand-alone system with battery storage

(a) voltage and amperes of module array; and

(b) battery storage level.

[3.3.28.19 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.20 INSPECTION OF SOLAR ENERGY SYSTEMS:

A. The inspections required through the application process for certification of a taxpayer's solar energy system are:

(1) inspection by the building code authority for building, electrical or mechanical code compliance, as applicable to the solar energy system type; and

(2) inspection for compliance with electric utility company requirements for photovoltaic systems that are interconnected to the distribution grid of that electric utility company, if applicable.

B. For purposes of ~~monitoring solar energy systems' operation, energy production and maintenance that the department has certified~~ inspecting the solar energy system's installation, the division or its authorized representative shall have the right to inspect a solar energy system ~~[a taxpayer] an applicant~~ owns and the department has certified, within three years after the department's certification, upon the division providing a minimum of five days notice to the taxpayer. ~~[If the division determines by inspection or review of system operation documentation that a solar energy system the department has previously certified does not meet 3.3.28 NMAC's requirements, the following process shall be followed:~~

~~(1) the department shall provide written notification to the taxpayer owning the solar energy system within 15 days of the decertification determination with recommendations for corrective action;~~

~~(2) within 30 days of taxpayer's receipt of the department's notification, the~~

~~taxpayer shall provide the department with a written description of corrective action taken or justification that the solar energy system meets 3.3.28 NMAC's requirements;~~

~~(3) within 30 days of department's receipt of taxpayer's corrective action or justification description, the department shall approve or disapprove the corrective action or justification and provide written notification to the taxpayer; and~~

~~(4) if the department approves the taxpayer's corrective action or justification, the department shall provide written notification of approval to the taxpayer or, if the taxpayer's corrective action or justification is disapproved or the taxpayer takes no action in response to the original decertification determination, the department shall provide written notification to the taxation and revenue department and a copy to the taxpayer that~~

~~(a) the taxpayer's solar energy system is no longer certified;~~

~~(b) the taxpayer is not eligible for the state tax credit of the decertified system;~~

~~(c) the taxpayer is not eligible for certification of future solar energy systems and the associated state tax credits; and~~

~~(d) the department may recertify the taxpayer's solar energy system if the taxpayer provides a written description of corrective action taken or justification that the solar energy system meets 3.3.28 NMAC's requirements, if applicable.]~~

[3.3.28.20 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

This is an amendment to 19.15.17 NMAC, Sections 11, 12, 13, 16, and 17, effective 7/16/09.

19.15.17.11 DESIGN AND CONSTRUCTION SPECIFICATIONS:

A. General specifications. An operator shall design and construct a pit, closed-loop system, below-grade tank or sump to contain liquids and solids and prevent contamination of fresh water and protect public health and the environment.

B. Stockpiling of topsoil. Prior to constructing a pit or closed-looped system, except a pit constructed in an emergency, the operator shall strip and stockpile the topsoil for use as the final cover or fill at the time of closure.

C. Signs. The operator shall post an upright sign not less than 12

inches by 24 inches with lettering not less than two inches in height in a conspicuous place on the fence surrounding the pit, closed-loop system or below-grade tank, unless the pit, closed-loop system or below-grade tank is located on a site where there is an existing well, signed in compliance with 19.15.16.8 NMAC, that is operated by the same operator. The operator shall post the sign in a manner and location such that a person can easily read the legend. The sign shall provide the following information: the operator's name; the location of the site by quarter-quarter or unit letter, section, township and range; and emergency telephone numbers.

D. Fencing.

(1) The operator shall fence or enclose a pit or below-grade tank in a manner that prevents unauthorized access and shall maintain the fences in good repair. Fences are not required if there is an adequate surrounding perimeter fence that prevents unauthorized access to the well site or facility, including the pit or below-grade tank. During drilling or workover operations, the operator is not required to fence the edge of the pit adjacent to the drilling or workover rig.

(2) The operator shall fence or enclose a pit or below-grade tank located within 1000 feet of a permanent residence, school, hospital, institution or church with a chain link security fence, at least six feet in height with at least two strands of barbed wire at the top. The operator shall ensure that all gates associated with the fence are closed and locked when responsible personnel are not on-site. During drilling or workover operations, the operator is not required to fence the edge of the temporary pit adjacent to the drilling or workover rig.

(3) The operator shall fence any other pit or below-grade tank to exclude livestock with a four foot fence that has at least four strands of barbed wire evenly spaced in the interval between one foot and four feet above ground level. The appropriate division district office may approve an alternative to this requirement if the operator demonstrates that an alternative provides equivalent or better protection. The appropriate division district office may impose additional fencing requirements for protection of wildlife in particular areas.

E. Netting. The operator shall ensure that a permanent pit or a permanent open top tank is screened, netted or otherwise rendered non-hazardous to wildlife, including migratory birds. Where netting or screening is not feasible, the operator shall on a monthly basis inspect for, and within 30 days of discovery, report discovery of dead migratory birds or other wildlife to the appropriate wildlife agency and to the appropriate division district office in order to facilitate assessment and

implementation of measures to prevent incidents from reoccurring.

F. Temporary pits. The operator shall design and construct a temporary pit in accordance with the following requirements.

(1) The operator shall design and construct a temporary pit to ensure the confinement of liquids to prevent unauthorized releases.

(2) A temporary pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear. The operator shall construct a temporary pit so that the slopes are no steeper than two horizontal feet to one vertical foot (2H:1V). The appropriate division district office may approve an alternative to the slope requirement if the operator demonstrates that it can construct and operate the temporary pit in a safe manner to prevent contamination of fresh water and protect public health and the environment.

(3) The operator shall design and construct a temporary pit with a geomembrane liner. The geomembrane liner shall consist of 20-mil string reinforced LLDPE or equivalent liner material that the appropriate division district office approves. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.

(4) The operator shall minimize liner seams and orient them up and down, not across a slope. The operator shall use factory welded seams where possible. Prior to field seaming, the operator shall overlap liners four to six inches and orient seams parallel to the line of maximum slope, *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall perform field seaming. The operator shall weld field liner seams.

(5) Construction shall avoid excessive stress-strain on the liner.

(6) Geotextile is required under the liner where needed to reduce localized stress-strain or protuberances that may otherwise compromise the liner's integrity.

(7) The operator shall anchor the edges of all liners in the bottom of a compacted earth-filled trench. The anchor trench shall be at least 18 inches deep.

(8) The operator shall ensure that the liner is protected from any fluid force or mechanical damage at any point of discharge into or suction from the lined temporary pit.

(9) The operator shall design and construct a temporary pit to prevent run-on of surface water. A berm, ditch, proper sloping or other diversion shall surround a temporary pit to prevent run-on of surface water. During drilling operations, the edge of the temporary pit adjacent to the drilling or workover rig is not required to have run-on protection if the operator is using the temporary pit to collect liquids escaping from the drilling or workover rig and run-on will not result in a breach of the temporary pit.

(10) The volume of a temporary pit shall not exceed 10 acre-feet, including freeboard.

(11) The part of a temporary pit used to vent or flare gas during a drilling or workover operation that is designed to allow liquids to drain to a separate temporary pit does not require a liner, unless the appropriate division district office requires an alternative design in order to protect surface water, ground water and the environment. The operator shall not allow free-standing liquids to remain on the unlined portion of a temporary pit used to vent or flare gas.

G. Permanent pits. The operator shall design and construct a permanent pit in accordance with the following requirements.

(1) Each permanent pit shall have a properly constructed foundation consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear. The operator shall construct a permanent pit so that the inside grade of the levee is no steeper than two horizontal feet to one vertical foot (2H:1V). The levee shall have an outside grade no steeper than three horizontal feet to one vertical foot (3H:1V). The levee's top shall be wide enough to install an anchor trench and provide adequate room for inspection and maintenance.

(2) Each permanent pit shall contain, at a minimum, a primary (upper) liner and a secondary (lower) liner with a leak detection system appropriate to the site's conditions. The edges of all liners shall be anchored in the bottom of a compacted earth-filled trench. The anchor trench shall be at least 18 inches deep.

(3) The primary (upper) liner and secondary (lower) liner shall be geomembrane liners. The geomembrane liner shall consist of 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner material the environmental bureau in the division's Santa Fe office approves. The geomembrane liner shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner

material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.

(4) The environmental bureau in the division's Santa Fe office may approve other liner media if the operator demonstrates to the satisfaction of the environmental bureau in the division's Santa Fe office that the alternative liner protects fresh water, public health, safety and the environment as effectively as the specified media.

(5) The operator shall minimize liner seams and orient them up and down, not across a slope. The operator shall use factory welded seams where possible. The operator shall ensure field seams in geosynthetic material are thermally seamed (hot wedge) with a double track weld to create an air pocket for non-destructive air channel testing. The operator shall test a seam by establishing an air pressure between 33 and 37 psi in the pocket and monitoring that the pressure does not change by more than one percent during five minutes after the pressure source is shut off from the pocket. Prior to field seaming, the operator shall overlap liners four to six inches and orient seams parallel to the line of maximum slope, *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe. Qualified personnel shall perform field seaming.

(6) At a point of discharge into or suction from the lined permanent pit, the operator shall ensure that the liner is protected from excessive hydrostatic force or mechanical damage. External discharge or suction lines shall not penetrate the liner.

(7) The operator shall place a leak detection system between the upper and lower geomembrane liners that consists of two feet of compacted soil with a saturated hydraulic conductivity of 1×10^{-5} cm/sec or greater to facilitate drainage. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the lower geomembrane liner in depressions and sloped to facilitate the earliest possible leak detection. Piping used shall be designed to withstand chemical attack from oil field waste or leachate; structural loading from stresses and disturbances from overlying oil field waste, cover materials, equipment operation or expansion or contraction; and to facilitate clean-out maintenance. The material the operator places between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the interior sub-grade and of drainage lines and laterals shall be at least a two percent grade, *i.e.*, two feet vertical drop per 100 horizontal feet. The

piping collection system shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid sidewall riser pipe to convey collected fluids to a collection, observation and disposal system located outside the permanent pit's perimeter. The operator may install alternative methods that the environmental bureau in the division's Santa Fe office approves.

(8) The operator shall notify the environmental bureau in the division's Santa Fe office at least 72 hours prior to the primary liner's installation so that a representative of the environmental bureau in the division's Santa Fe office may inspect the leak detection system before it is covered.

(9) The operator shall construct a permanent pit in a manner that prevents overtopping due to wave action or rainfall and maintain a three foot freeboard at all times.

(10) The volume of a permanent pit shall not exceed 10 acre-feet, including freeboard.

(11) The operator shall maintain a permanent pit to prevent run-on of surface water. A permanent pit shall be surrounded by a berm, ditch or other diversion to prevent run-on of surface water.

H. Closed-loop systems.

(1) The operator shall design and construct a closed-loop system to ensure the confinement of oil, gas or water to prevent uncontrolled releases.

(2) An operator of a closed-loop system that uses temporary pits for solids management shall comply with the requirements for temporary pits specified in 19.15.17 NMAC.

(3) An operator of a closed-loop system with drying pads shall design and construct the drying pads to include the following:

(a) appropriate liners that prevent the contamination of fresh water and protect public health and the environment;

(b) sumps to facilitate the collection of liquids derived from drill cuttings; and

(c) berms that prevent run-on of surface water or fluids.

I. Below-grade tanks.

The operator shall design and construct a below-grade tank in accordance with the following requirements, as applicable.

(1) The operator shall ensure that a below-grade tank is constructed of materials resistant to the below-grade tank's particular contents and resistant to damage from sunlight.

(2) A below-grade tank system shall have a properly constructed foundation consisting of a level base free of rocks, debris, sharp edges or irregularities to pre-

vent punctures, cracks or indentations of the liner or tank bottom.

(3) The operator shall construct a below-grade tank to prevent overflow and the collection of surface water run-on.

(4) An operator shall construct a below-grade tank in accordance with one of the following designs.

(a) An operator may construct and use a below-grade tank that does not have double walls provided that the below-grade tank's side walls are open for visual inspection for leaks, the below-grade tank's bottom is elevated a minimum of six inches above the underlying ground surface and the below-grade tank is underlain with a geomembrane liner, which may be covered with gravel, to divert leaked liquid to a location that can be visually inspected. The operator shall equip below-grade tanks designed in this manner with a properly operating automatic high-level shut-off control device and manual controls to prevent overflows. The geomembrane liner shall consist of 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner material that the appropriate division district office approves. The geomembrane liner shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.

(b) All other below-grade tanks, in which the side walls are not open for visible inspection for leaks shall be double walled with leak detection capability.

(c) An operator may construct a below-grade tank according to an alternative system that the appropriate district office approves based upon the operator's demonstration that the alternative provides equivalent or better protection.

(5) The operator of a below-grade tank constructed and installed prior to June 16, 2008 that ~~has the side walls open for visual inspection and is placed upon a geomembrane liner but~~ does not meet all the requirements in Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC and is not included in Paragraph (6) of Subsection I of 19.15.17.11 NMAC is not required to equip or retrofit the below-grade tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC so long as it demonstrates integrity. If the existing below-grade tank does not demonstrate integrity, the operator shall promptly remove that below-grade tank and install a below-grade tank that complies with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC. The operator shall

comply with the operational requirements of 19.15.17.12 NMAC.

(6) The operator of a below-grade tank constructed and installed prior to June 16, 2008 that ~~[does not comply with Paragraph (1) through (4) of Subsection I of 19.15.17.11 NMAC or that does not comply with Paragraph (5) of Subsection I of 19.15.17.11 NMAC]~~ is single walled and where any portion of the tank sidewall is below the ground surface and not visible shall equip or retrofit the below-grade tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC, or close it, within five years after June 16, 2008. If the existing below-grade tank does not demonstrate integrity, the operator shall promptly remove that below-grade tank and install a below-grade tank that complies with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC. The operator shall comply with the operational requirements of 19.15.17.12 NMAC.

J. On-site trenches for closure. The operator shall design and construct an on-site trench for closure, specified in Paragraph (2) of Subsection B of 19.15.17.13 NMAC or Paragraph (2) of Subsection D of 19.15.17.13 NMAC, in accordance with the following requirements.

(1) The operator shall locate the trench to satisfy the siting criteria specified in Subsection C of 19.15.17.10 NMAC and Subparagraph (d) of Paragraph (3) of Subsection F of 19.15.17.13 NMAC and excavate to an appropriate depth that allows for the installation of the geomembrane bottom liner, geomembrane liner cover and the division-prescribed soil cover required pursuant to Subsection H of 19.15.17.13 NMAC.

(2) An on-site trench shall have a properly constructed foundation and side walls consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear.

(3) Geotextile is required under the liner where needed to reduce localized stress-strain or protuberances that may otherwise compromise the liner's integrity.

(4) An on-site trench shall be constructed with a geomembrane liner. The geomembrane shall consist of a 20-mil string reinforced LLDPE liner or equivalent liner that the appropriate division district office approves. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.

(5) The operator shall minimize liner seams and orient them up and down,

not across a slope. The operator shall use factory welded seams where possible. Prior to field seaming, the operator shall overlap liners four to six inches and orient liner seams parallel to the line of maximum slope, *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall perform field seaming. The operator shall weld field liner seams.

(6) The operator shall install sufficient liner material to reduce stress-strain on the liner.

(7) The operator shall ensure that the outer edges of all liners are secured for the placement of the excavated waste material into the trench.

(8) The operator shall fold the outer edges of the trench liner to overlap the waste material in the trench prior to the installation of the geomembrane cover.

(9) The operator shall install a geomembrane cover over the waste material in the lined trench. The operator shall install the geomembrane cover in a manner that prevents the collection of infiltration water in the lined trench and on the geomembrane cover after the soil cover is in place.

(10) The geomembrane cover shall consist of a 20-mil string reinforced LLDPE liner or equivalent cover that the appropriate division district office approves. The geomembrane cover shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Cover compatibility shall comply with EPA SW-846 method 9090A.

[19.15.17.11 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08; A, 12/1/08; A, 7/16/09]

19.15.17.12 OPERATIONAL REQUIREMENTS:

A. General specifications. An operator shall maintain and operate a pit, closed-loop system, below-grade tank or sump in accordance with the following requirements.

(1) The operator shall operate and maintain a pit, closed-loop system, below-grade tank or sump to contain liquids and solids and maintain the integrity of the liner, liner system or secondary containment system, prevent contamination of fresh water and protect public health and the environment.

(2) The operator shall recycle, reuse or reclaim or dispose of all drilling fluids in a manner, approved by division rules, that prevents the contamination of fresh water and protects public health and the environment.

(3) The operator shall not discharge into or store any hazardous waste in

a pit, closed-loop system, below-grade tank or sump.

(4) If any pit liner's integrity is compromised, or if any penetration of the liner occurs above the liquid's surface, then the operator shall notify the appropriate division district office within 48 hours of the discovery and repair the damage or replace the liner.

(5) If a pit, below-grade tank, closed-loop system or sump develops a leak, or if any penetration of the pit liner, below-grade tank, closed-loop system or sump occurs below the liquid's surface, then the operator shall remove all liquid above the damage or leak line within 48 hours, notify the appropriate division district office within 48 hours of the discovery and repair the damage or replace the pit liner, below-grade tank, closed-loop system or sump.

(6) The injection or withdrawal of liquids from a pit shall be accomplished through a header, diverter or other hardware that prevents damage to the liner by erosion, fluid jets or impact from installation and removal of hoses or pipes.

(7) The operator shall operate and install a pit, below-grade tank or sump to prevent the collection of surface water runoff.

(8) The operator shall install, or maintain on site, an oil absorbent boom or other device to contain and remove oil from a pit's surface.

B. Temporary pits. An operator shall maintain and operate a temporary pit in accordance with the following additional requirements.

(1) Only fluids used or generated during the drilling or workover process may be discharged into a temporary pit. The operator shall maintain a temporary pit free of miscellaneous solid waste or debris. The operator shall use a tank made of steel or other material, which the appropriate division district office approves, to contain hydrocarbon-based drilling fluids. Immediately after cessation of a drilling or workover operation, the operator shall remove any visible or measurable layer of oil from the surface of a drilling or workover pit.

(2) The operator shall maintain at least two feet of freeboard for a temporary pit.

(3) The operator shall inspect a temporary pit containing drilling fluids at least daily while the drilling or workover rig is on-site. Thereafter, the operator shall inspect the temporary pit weekly so long as liquids remain in the temporary pit. The operator shall maintain a log of such inspections and make the log available for the appropriate division district office's review upon request. The operator shall file a copy of the log with the appropriate division dis-

trict office when the operator closes the temporary pit.

(4) The operator shall remove all free liquids from a temporary pit within 30 days from the date that the operator releases the drilling or workover rig. The operator shall note the date of the drilling or workover rig's release on form C-105 or C-103 upon well or workover completion. The appropriate division district office may grant an extension of up to three months.

(5) The operator shall remove any liquids from the temporary pit used for cavitation within 48 hours after completing cavitation. The operator may request and receive additional time to remove the liquids from the temporary pit used for cavitation if the operator demonstrates to the appropriate division district office's satisfaction that it is not feasible to access the location with 48 hours.

C. Permanent pits. An operator shall maintain and operate a permanent pit in accordance with the following additional requirements.

(1) The operator shall maintain at least three feet of freeboard for a permanent pit; the operator shall permanently mark such level on the permanent pit.

(2) No oil or floating hydrocarbon shall be present in a permanent pit.

D. Below-grade tanks. An operator shall maintain and operate a below-grade tank in accordance with the following additional requirements.

(1) The operator shall not allow a below-grade tank to overflow or allow surface water run-on to enter the below-grade tank.

(2) The operator shall remove any visible or measurable layer of oil from the fluid surface of a below-grade tank.

(3) The operator shall inspect the below-grade tank at least monthly and maintain a written record of each inspection for five years.

(4) The operator shall maintain adequate freeboard to prevent overtopping of the below-grade tank.

(5) The operator of a below-grade tank constructed and installed prior to June 16, 2008 that does not meet the requirements of Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC who discovers that the below-grade tank does not demonstrate integrity or that the below-grade tank develops any of the conditions identified in Paragraph (5) of Subsection A of 19.15.17.12 NMAC shall close the existing below-grade tank pursuant to the closure requirements of 19.15.17.13 NMAC and install a below-grade tank that complies with the requirements of Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC.

(6) The operator of a below-grade

tank constructed and installed prior to June 16, 2008 that does not comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC who equips or retrofits the existing tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC shall visually inspect the area beneath the below-grade tank during the retrofit and document any areas that are wet, discolored or showing other evidence of a release on form C-141. The operator shall demonstrate to the division whether the evidence of contamination indicates that an imminent threat to fresh water, public health, safety or the environment exists. If the division determines that the contamination does not pose an imminent threat to fresh water, public health, safety or the environment, the operator shall complete the retrofit or the replacement of the below-grade tank. If the operator or division determines that the contamination poses an imminent threat to fresh water, public health, safety or the environment, then the operator shall close the existing below-grade tank pursuant to the closure requirements of 19.15.17.13 NMAC prior to initiating the retrofit or replacement.

E. Sumps. The operator shall maintain and operate a sump in accordance with the following additional requirements.

(1) The operator shall visually inspect a sump's integrity annually and promptly repair or replace a sump that fails the inspection.

(2) The operator shall maintain records of sump inspection and make the records available for the appropriate division district office's review upon request. [19.15.17.12 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08; A, 7/16/09]

19.15.17.13 C L O S U R E REQUIREMENTS:

A. Time requirements for closure. An operator shall close a pit, closed-loop system or below-grade tank within the time periods provided in 19.15.17.13 NMAC, or by an earlier date that the division requires because of imminent danger to fresh water, public health or the environment.

(1) An operator shall cease discharging into an existing unlined permanent pit that is permitted by or registered with the division within two years after June 16, 2008. An operator shall close an existing unlined permanent pit that is permitted by or registered with the division within three years after June 16, 2008.

(2) An operator shall cease discharging into an existing, lined or unlined, permanent pit that is not permitted by or registered with the division on or by June 16, 2008. An operator shall close an exist-

ing, lined or unlined, permanent pit that is not permitted by or registered with the division within six months after June 16, 2008.

(3) An operator shall close an existing unlined temporary pit within three months after June 16, 2008.

(4) An operator shall close an existing below-grade tank that does not meet the requirements of Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC or is not included in Paragraph (5) of Subsection I of 19.15.17.11 NMAC within five years after June 16, 2008, if not retrofitted to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC.

(5) An operator shall close an existing below-grade tank that does not meet the requirements of Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC, if not retrofitted to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC, prior to any sale or change of operator pursuant to 19.15.9.9 NMAC.

~~(5)~~ (6) An operator shall close any other permitted permanent pit within 60 days of cessation of operation of the permanent pit in accordance with a closure plan that the environmental bureau in the division's Santa Fe office approves.

~~(6)~~ (7) An operator shall close any other permitted temporary pit within six months from the date that the operator releases the drilling or workover rig. The appropriate division district office may grant an extension not to exceed three months.

~~(7)~~ (8) An operator shall close a drying pad used for a closed-loop system permitted under 19.15.17 NMAC or in operation on June 16, 2008, within six months from the date that the operator releases the drilling or workover rig. The operator shall note the date of the drilling or workover rig's release on form C-105 or C-103, filed with the division, upon the well's or workover's completion. The appropriate division district office may grant an extension not to exceed six months.

~~(8)~~ (9) An operator shall close a permitted below-grade tank within 60 days of cessation of the below-grade tank's operation or as required by the transitional provisions of Subsection B of 19.15.17.17 NMAC in accordance with a closure plan that the appropriate division district office approves.

B. Closure methods for temporary pits. The operator of a temporary pit shall remove all liquids from the temporary pit prior to closure and dispose of the liquids in a division-approved facility or recycle, reuse or reclaim the liquids in a manner that the appropriate division district office approves. The operator shall close

the temporary pit by one of the following methods.

(1) Waste excavation and removal.

(a) The operator shall close the temporary pit by excavating all contents and, if applicable, synthetic pit liners and transferring those materials to a division-approved facility.

(b) The operator shall test the soils beneath the temporary pit to determine whether a release has occurred.

(i) For temporary pits where ground water is between 50 and 100 feet below the bottom of the temporary pit or for cavitation pits allowed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 19.15.17.10 NMAC, the operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for benzene, total BTEX, TPH, the GRO and DRO combined fraction and chlorides to demonstrate that benzene, as determined by EPA SW-846 method 8021B or 8260B or other EPA method that the division approves, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021B or 8260B or other EPA method that the division approves, does not exceed 50 mg/kg; TPH, as determined by EPA SW-846 method 418.1 or other EPA method that the division approves, does not exceed 2500 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 500 mg/kg or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.

(ii) For temporary pits where ground water is more than 100 feet below the bottom of the temporary pit, the operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for benzene, total BTEX, TPH, the GRO and DRO combined fraction and chlorides to demonstrate that benzene, as determined by EPA SW-846 method 8021B or 8260B or other EPA method that the division approves, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021B or 8260B or other method that the division approves, does not exceed 50 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; the TPH, as determined by EPA method 418.1 or other EPA method that the division approves,

does not exceed 2500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 1000 mg/kg or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.

(c) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.29 NMAC and 19.15.30 NMAC, as appropriate.

(d) If the sampling program demonstrates that a release has not occurred or that any release does not exceed the concentrations specified in Subparagraph (b) of Paragraph (1) of Subsection B of 19.15.17.13 NMAC, then the operator shall backfill the temporary pit excavation with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; recontour and re-vegetate the site. The division-prescribed soil cover, recontouring and re-vegetation requirements shall comply with Subsections G, H and I of 19.15.17.13 NMAC.

(2) On-site burial. The operator shall demonstrate and comply with the siting requirements in Subsection C of 19.15.17.10 NMAC and the closure requirements and standards of Subsection F of 19.15.17.13 NMAC if the proposed closure method of a temporary pit involves on-site burial.

(3) Alternative closure methods. If the environmental bureau in the division's Santa Fe office grants an exception approving a closure method for a specific temporary pit other than as specified in Paragraphs (1) or (2) of Subsection B of 19.15.17.13 NMAC, then the operator shall close that temporary pit by the method that the environmental bureau in the division's Santa Fe office approves.

C. Closure method for permanent pits.

(1) The operator shall remove all liquids and BS&W from the permanent pit prior to implementing a closure method and shall dispose of the liquids and BS&W in a division-approved facility.

(2) The operator shall remove the pit liner system, if applicable, and dispose of it in a division-approved facility. If there is on-site equipment associated with permanent pit, the operator shall remove the equipment, unless the equipment is required for some other purpose.

(3) The operator shall test the soils beneath the permanent pit to determine whether a release has occurred. The operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for BTEX, TPH and chlorides

to demonstrate that the benzene concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 0.2 mg/kg; total BTEX concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 50 mg/kg; the TPH concentration, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 100 mg/kg; and the chloride concentration, as determined by EPA method 300.1 or other EPA method that the division approves, does not exceed 250 mg/kg, or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.

(4) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.29 NMAC and 19.15.30 NMAC, as appropriate.

(5) If the sampling program demonstrates that a release has not occurred or that any release does not exceed the concentrations specified in Paragraph (3) of Subsection C of 19.15.17.13 NMAC, then the operator shall backfill the excavation with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; recontour and re-vegetate the site. The division-prescribed soil cover, recontouring and re-vegetation requirements shall comply with Subsections G, H and I of 19.15.17.13 NMAC.

D. Closure methods for closed-loop systems. An operator of a closed-loop system that uses a temporary pit, in lieu of a drying pad, shall comply with the closure requirements for temporary pits specified in Subsection B of 19.15.17.13 NMAC. The operator of a closed-loop system that uses a drying pad shall close the system by one of the following methods.

(1) Waste removal.

(a) The operator shall transfer the waste and the drying pad liner to a division-approved facility.

(b) The operator shall substantially restore and re-vegetate the impacted area's surface in accordance with Subsections G, H and I of 19.15.17.13 NMAC.

(2) On-site burial. The operator shall demonstrate and comply with the siting requirements of Subsection C of 19.15.17.10 NMAC and the closure requirements and standards of Subsection F of 19.15.17.13 NMAC if the proposed closure method of a drying pad associated with a closed-loop system involves on-site burial.

(3) Alternative closure methods. If the environmental bureau in the division's

Santa Fe office grants an exception approving a closure method for a specific closed-loop system other than as specified in Paragraphs (1) or (2) of Subsection D of 19.15.17.13 NMAC, then the operator shall close that drying pad associated with a closed-loop system by the method the environmental bureau in the division's Santa Fe office approves.

E. Closure method for below-grade tanks.

(1) The operator shall remove liquids and sludge from a below-grade tank prior to implementing a closure method and shall dispose of the liquids and sludge in a division-approved facility.

(2) The operator shall remove the below-grade tank and dispose of it in a division-approved facility or recycle, reuse, or reclaim it in a manner that the appropriate division district office approves.

(3) If there is any on-site equipment associated with a below-grade tank, then the operator shall remove the equipment, unless the equipment is required for some other purpose.

(4) The operator shall test the soils beneath the below-grade tank to determine whether a release has occurred. The operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for BTEX, TPH and chlorides to demonstrate that the benzene concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 0.2 mg/kg; total BTEX concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 50 mg/kg; the TPH concentration, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 100 mg/kg; and the chloride concentration, as determined by EPA method 300.1 or other EPA method that the division approves, does not exceed 250 mg/kg, or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.

(5) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.29 NMAC and 19.15.30 NMAC, as appropriate.

(6) If the sampling program demonstrates that a release has not occurred or that any release does not exceed the concentrations specified in Paragraph (4) of Subsection E of 19.15.17.13 NMAC, then the operator shall backfill the excavation with compacted, non-waste containing,

earthen material; construct a division-prescribed soil cover; recontour and re-vegetate the site. The division-prescribed soil cover, recontouring and re-vegetation requirements shall comply with Subsections G, H and I of 19.15.17.13 NMAC.

F. On-site closure methods. The following closure requirements and standards apply if the operator proposes a closure method for a drying pad associated with a closed-loop system or a temporary pit pursuant to Paragraph (2) of Subsection D of 19.15.17.13 NMAC or Paragraph (2) of Subsection B of 19.15.17.13 NMAC that involves on-site burial, or an alternative closure method pursuant to Paragraph (3) of Subsection D of 19.15.17.13 NMAC or Paragraph (3) of Subsection B of 19.15.17.13 NMAC and Subsection B of 19.15.17.15 NMAC.

(1) General requirements.

(a) Any proposed on-site closure method shall comply with the siting criteria specified in Subsection C of 19.15.17.10 NMAC.

(b) The operator shall provide the surface owner notice of the operator's proposal of an on-site closure method. The operator shall attach the proof of notice to the permit application.

(c) The operator shall comply with the closure requirements and standards of Paragraphs (2) and (3), as applicable, of Subsection F of 19.15.17.13 NMAC if the proposed closure method for a drying pad associated with a closed-loop system or for a temporary pit involves on-site burial pursuant to Paragraph (2) of Subsection D of 19.15.17.13 NMAC or Paragraph (2) of Subsection B of 19.15.17.13 NMAC, or involves an alternative closure method pursuant to Paragraph (3) of Subsection D of 19.15.17.13 NMAC or Paragraph (3) of Subsection B of 19.15.17.13 NMAC and Subsection B of 19.15.17.15 NMAC.

(d) The operator shall place a steel marker at the center of an on-site burial. The steel marker shall be not less than four inches in diameter and shall be cemented in a three-foot deep hole at a minimum. The steel marker shall extend at least four feet above mean ground level and at least three feet below ground level. The operator name, lease name and well number and location, including unit letter, section, township and range, and that the marker designates an on-site burial location shall be welded, stamped or otherwise permanently engraved into the metal of the steel marker. A person shall not build permanent structures over an on-site burial without the appropriate division district office's written approval. A person shall not remove an on-site burial marker without the division's written permission.

(e) The operator shall report the

exact location of the on-site burial on form C-105 filed with the division.

(f) The operator shall file a deed notice identifying the exact location of the on-site burial with the county clerk in the county where the on-site burial occurs.

(2) In-place burial.

(a) Where the operator meets the siting criteria specified in Paragraphs (2) or (3) of Subsection C of 19.15.17.10 NMAC and the applicable waste criteria specified in Subparagraphs (c) or (d) of Paragraph (2) of Subsection F of 19.15.17.13 NMAC, an operator may use in-place burial (burial in the existing temporary pit) for closure of a temporary pit or bury the contents of a drying pad associated with a closed-loop system in a temporary pit that the operator constructs in accordance with Paragraphs (1) through (6) and (10) of Subsection F of 19.15.17.11 NMAC for closure of a drying pad associated with a closed loop system.

(b) Prior to closing an existing temporary pit or to placing the contents from a drying pad associated with a closed-loop system into a temporary pit that the operator constructs for disposal, the operator shall stabilize or solidify the contents to a bearing capacity sufficient to support the temporary pit's final cover. The operator shall not mix the contents with soil or other material at a mixing ratio of greater than 3:1, soil or other material to contents.

(c) Where ground water will be between 50 and 100 feet below the bottom of the buried waste, the operator shall collect at a minimum, a five point, composite sample of the contents of the drying pad associated with a closed-loop system or the contents of a temporary pit after treatment or stabilization, if treatment or stabilization is required, to demonstrate that benzene, as determined by EPA SW-846 method 8021 B or 8260B, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021 B or 8260B, does not exceed 50 mg/kg; TPH, as determined by EPA SW-846 method 418.1 or other EPA method approved that the division approves, does not exceed 2500 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 500 mg/kg or the background concentration, whichever is greater. The operator may collect the composite sample prior to treatment or stabilization to demonstrate that the contents do not exceed these concentrations. However, if the contents collected prior to treatment or stabilization exceed the specified concentrations the operator shall collect a second five point, composite sample of the contents after treatment or stabilization to demonstrate that the contents do not exceed these concentrations.

(d) Where the ground water will be more than 100 feet below the bottom of the buried waste, the operator shall collect at a minimum, a five point, composite sample of the contents of the drying pad associated with a closed-loop system or the contents of a temporary pit after treatment or stabilization, if treatment or stabilization is required, to demonstrate that benzene, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 50 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; TPH, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 2500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 1000 mg/kg or the background concentration, whichever is greater. The operator may collect the composite sample prior to treatment or stabilization to demonstrate that the contents do not exceed these concentrations. However, if the contents collected prior to treatment or stabilization exceed the specified concentrations the operator shall collect a second five point, composite sample of the contents after treatment or stabilization to demonstrate that the contents do not exceed these concentrations.

(e) Upon closure of a temporary pit, or closure of a temporary pit that the operator constructs for burial of the contents of a drying pad associated with a closed-loop system, the operator shall cover the geomembrane lined, filled, temporary pit with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; recontour and re-vegetate the site. The division-prescribed soil cover, recontouring and re-vegetation shall comply with Subsections G, H and I of 19.15.17.13 NMAC.

(f) For burial of the contents from a drying pad associated with a closed-loop system, the operator shall construct a temporary pit, in accordance with Paragraphs (1) through (6) and (10) of Subsection F of 19.15.17.11 NMAC, within 100 feet of the drying pad associated with a closed-loop system, unless the appropriate division district office approves an alternative distance and location. The operator shall use a separate temporary pit for closure of each drying pad associated with a closed-loop system.

(3) On-site trench burial.

(a) Where the operator meets the siting criteria in Paragraph (4) of Subsection C of 19.15.17.10 NMAC, an operator may use on-site trench burial for closure of a drying pad associated with a closed loop system or for closure of a temporary pit when the waste meets the criteria in Subparagraph (c) of Paragraph (3) of

Subsection F of 19.15.17.13 NMAC, provided that the operator certifies to the division that it has given written notice to the surface owner that it intends to do so. The operator shall use a separate on-site trench for closure of each drying pad associated with a closed-loop system or each temporary pit.

(b) Prior to placing the contents from a drying pad associated with a closed-loop system or from a temporary pit into the trench, the operator shall stabilize or solidify the contents to a bearing capacity sufficient to support the final cover of the trench burial. The operator shall not mix the contents with soil or other material at a mixing ratio of greater than 3:1, soil or other material to contents.

(c) The operator shall collect at a minimum, a five point, composite sample of the contents of the drying pad associated with a closed-loop system or of the temporary pit to demonstrate that the TPH concentration, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 2500 mg/kg. Using EPA SW-846 method 1312 or other EPA leaching procedure that the division approves, the operator shall demonstrate that (i) the chloride concentration, as determined by EPA method 300.1 or other EPA method that the division approves, does not exceed ~~250~~ 3000 mg/l ~~[and that]~~ or the background concentration, whichever is greater. (ii) the concentrations of the inorganic water contaminants specified in Subsection A of 20.6.2.3103 NMAC as determined by appropriate EPA methods do not exceed the standards specified in Subsection A of 20.6.2.3103 NMAC or the background concentration, whichever is greater. and (iii) the concentrations of the organic water contaminants specified in Subsection A of 20.6.2.3103 NMAC as determined by appropriate EPA methods do not exceed the standards specified in Subsection A of 20.6.2.3103 NMAC, unless otherwise specified above. The operator may collect the composite sample prior to treatment or stabilization to demonstrate that the contents do not exceed these concentrations. However, if the contents collected prior to treatment or stabilization exceed the specified concentrations the operator shall collect a second five point, composite sample of the contents after treatment or stabilization to demonstrate that the contents do not exceed these concentrations.

(d) If the contents from a drying pad associated with a closed-loop system or from a temporary pit do not exceed the criteria in Subparagraph (c) of Paragraph (3) of Subsection F of 19.15.17.13 NMAC, the operator shall construct a trench lined with a geomembrane liner located within 100 feet of the drying pad associated with a

closed-loop system or temporary pit, unless the appropriate division district office approves an alternative distance and location. The operator shall design and construct the lined trench in accordance with the design and construction requirements specified in Paragraphs (1) through (8) of Subsection J of 19.15.17.11 NMAC.

(e) The operator shall close each drying pad associated with a closed-loop system or temporary pit by excavating and transferring all contents and synthetic pit liners or liner material associated with a closed-loop system or temporary pit to a lined trench. The excavated materials shall pass the paint filter liquids test (EPA SW-846, method 9095) and the closure standards specified in Subparagraph (c) of Paragraph (3) of Subsection F of 19.15.17.13 NMAC.

(f) The operator shall test the soils beneath the temporary pit after excavation to determine whether a release has occurred.

(i) Where ground water is between 50 and 100 feet below the bottom of the temporary pit, the operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for BTEX, TPH, benzene, GRO and DRO combined fraction and chlorides to demonstrate that benzene, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 50 mg/kg; TPH, as determined by EPA SW-846 method 418.1 or other EPA method approved that the division approves, does not exceed 2500 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 500 mg/kg or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results. The operator shall notify the division of its results on form C-141.

(ii) Where ground water is more than 100 feet below the bottom of the temporary pit, the operator shall collect at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for BTEX, TPH, benzene, GRO and DRO combined fraction and chlorides to demonstrate that benzene, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 50 mg/kg; the

GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; TPH, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 2500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 1000 mg/kg or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.

(g) If the sampling program demonstrates that a release has not occurred or that any release does not exceed the concentrations specified in Subparagraph (c) of Paragraph (3) of Subsection F of 19.15.17.13 NMAC, then the operator shall backfill the excavation with compacted, non-waste containing earthen material; construct a division-prescribed soil cover; recontour and re-vegetate the site. The division-prescribed soil cover, recontouring and re-vegetation shall comply with Subsections G, H and I of 19.15.17.13 NMAC.

(h) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.29 NMAC and 19.15.30 NMAC, as appropriate. The operator may propose to transfer the excavated, contaminated soil into the lined trench.

(i) The operator shall install a geomembrane cover over the excavated material in the lined trench. The operator shall design and construct the geomembrane cover in accordance with the requirements specified in Paragraphs (9) and (10) of Subsection J of 19.15.17.11 NMAC.

(j) The operator shall cover the geomembrane lined and covered, filled, trench with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; recontour and re-vegetate the site. The division-prescribed soil cover, recontouring and re-vegetation shall comply with Subsections G, H and I of 19.15.17.13 NMAC.

G. Reclamation of pit locations, on-site burial locations and drying pad locations.

(1) Once the operator has closed a pit or trench or is no longer using a drying pad, below-grade tank or an area associated with a closed-loop system, pit, trench or below-grade tank, the operator shall reclaim the pit location, drying pad location, below-grade tank location or trench location and all areas associated with the closed-loop system, pit, trench or below-grade tank including associated access roads to a safe and stable condition that blends with the surrounding undisturbed area. The operator shall substantially restore the impacted sur-

face area to the condition that existed prior to oil and gas operations by placement of the soil cover as provided in Subsection H of 19.15.17.13 NMAC, recontour the location and associated areas to a contour that approximates the original contour and blends with the surrounding topography and re-vegetate according to Subsection I of 19.15.17.13 NMAC.

(2) The operator may propose an alternative to the re-vegetation requirement if the operator demonstrates that the proposed alternative prevents erosion, and protects fresh water, human health and the environment. The proposed alternative shall be agreed upon by the surface owner. The operator shall submit the proposed alternative, with written documentation that the surface owner agrees to the alternative, to the division for approval.

H. Soil cover designs.

(1) The soil cover for closures where the operator has removed the pit contents or remediated the contaminated soil to the division's satisfaction shall consist of the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

(2) The soil cover for burial-in-place or trench burial shall consist of a minimum of four feet of compacted, non-waste containing, earthen material. The soil cover shall include either the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

(3) The operator shall construct the soil cover to the site's existing grade and prevent ponding of water and erosion of the cover material.

I. Re-vegetation.

(1) The first growing season after the operator closes a pit or trench or is no longer using a drying pad, below-grade tank or an area associated with a closed-loop system, pit or below-grade tank including access roads, the operator shall seed or plant the disturbed areas.

(2) The operator shall accomplish seeding by drilling on the contour whenever practical or by other division-approved methods. The operator shall obtain vegetative cover that equals 70% of the native perennial vegetative cover (un-impacted by overgrazing, fire or other intrusion damaging to native vegetation) consisting of at least three native plant species, including at least one grass, but not including noxious weeds, and maintain that cover through two successive growing seasons. During the two growing seasons that prove viability, there shall be no artificial irrigation of the vegetation.

(3) The operator shall repeat seeding or planting until it successfully achieves the required vegetative cover.

(4) When conditions are not favorable for the establishment of vegetation, such as periods of drought, the division may allow the operator to delay seeding or planting until soil moisture conditions become favorable or may require the operator to use additional cultural techniques such as mulching, fertilizing, irrigating, fencing or other practices.

(5) The operator shall notify the division when it has seeded or planted and when it successfully achieves re-vegetation.

J. Closure notice.

(1) The operator shall notify the surface owner by certified mail, return receipt requested, that the operator plans to close a temporary pit, a permanent pit, a below-grade tank or where the operator has approval for on-site closure. Evidence of mailing of the notice to the address of the surface owner shown in the county tax records is sufficient to demonstrate compliance with this requirement.

(2) The operator of a temporary pit or below-grade tank or an operator who is approved for on-site closure shall notify the appropriate division district office verbally or by other means at least 72 hours, but not more than one week, prior to any closure operation. The notice shall include the operator's name and the location to be closed by unit letter, section, township and range. If the closure is associated with a particular well, then the notice shall also include the well's name, number and API number.

(3) An operator of a permanent pit shall notify the environmental bureau in the division's Santa Fe office at least 60 days prior to cessation of operations and provide a proposed schedule for closure. If there is no closure plan on file with the environmental bureau in the division's Santa Fe office applicable to the permanent pit, the operator shall provide a closure plan with this notice. Upon receipt of the notice and proposed schedule, the environmental bureau in the division's Santa Fe office shall review the current closure plan for adequacy and inspect the site.

K. Closure report. Within 60 days of closure completion, the operator shall submit a closure report on form C-144, with necessary attachments to document all closure activities including sampling results; information required by 19.15.17 NMAC; a plot plan; and details on back-filling, capping and covering, where applicable. In the closure report, the operator shall certify that all information in the report and attachments is correct and that the operator has complied with all applicable closure requirements and conditions specified in the approved closure plan. If the operator used a temporary pit, the operator shall provide a plat of the pit location on form C-105 with-

in 60 days of closing the temporary pit.

[19.15.17.13 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08; A, 12/1/08; A, 7/16/09]

19.15.17.16 PERMIT APPROVALS, CONDITIONS, DENIALS, REVOCATIONS, SUSPENSIONS, MODIFICATIONS OR TRANSFERS:

A. The division shall review all applications to permit facilities subject to 19.15.17 NMAC, and may approve, deny or approve an application with conditions. If the division denies an application or approves the application subject to conditions not expressly provided by the Oil and Gas Act or in 19.15 NMAC, then the division shall notify the applicant by certified mail, return receipt requested, and shall set the matter for hearing if the applicant so requests within 10 days after receipt of such notification.

B. Granting of permit. The division shall issue a permit upon finding that an operator has filed an acceptable application and that the proposed construction, operation and closure of a pit, closed-loop system, below-grade tank or proposed alternative will comply with applicable statutes and rules and will not endanger fresh water, public health, safety or the environment.

C. Conditions. The division may impose conditions or requirements that it determines are necessary and proper for the protection of fresh water, public health, safety or the environment. The division shall incorporate such additional conditions or requirements into the permit.

D. Denial of application. The division may deny an application for a permit if it finds that the application and materials that the operator submitted for consideration with the application do not sufficiently demonstrate that the operator can construct, operate and close the proposed pit, closed-loop system, below-grade tank or proposed alternative without detriment to fresh water, public health, safety or the environment.

E. Revocation, suspension or modification of a permit. The operator may apply to the division for a modification of the permit pursuant 19.15.17 NMAC. The operator shall demonstrate that the proposed modification complies with the applicable provisions of 19.15.17 NMAC. Any modification that is equivalent to an exception of any paragraph of 19.15.17 NMAC shall be subject to the notice and approval procedures required for an exception. The division may revoke, suspend or impose additional operating conditions or limitations on a permit at any time, after notice and opportunity for a hearing, if the division

determines that the operator or the permitted facility is in material breach of any applicable statutes or rules, or that such action is necessary for the protection of fresh water, public health or the environment. The division shall notify the operator by certified mail, return receipt requested, of any intended revocation, suspension or imposition of additional conditions, and the operator shall have 10 days after receipt of notification to request a hearing. The division may suspend a permit or impose additional conditions or limitations without hearing in an emergency to forestall an imminent threat to fresh water, public health, safety or the environment, subject to the provisions of NMSA 1978, Section 70-2-23, as amended.

F. Transfer of a permit. The operator shall not transfer a permit without the division's prior written approval. Except for existing below-grade tanks that do not meet the requirements of Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC, the division's approval of an application to transfer a well or other facility with which a permitted pit, below-grade tank or closed-loop system is associated shall constitute approval of the transfer of the permit for the pit, below-grade tank or closed-loop system. The operator of a below-grade tank constructed and installed prior to June 16, 2008 shall close the existing below-grade tank pursuant to the closure requirements of 19.15.17.13 NMAC or complete the retrofit of the existing below-grade tank to comply with the Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC prior to any sale or change of operator pursuant to 19.15.9.9 NMAC. In all other cases, the operator and the transferee shall apply for approval to transfer the permit to the division office to which permit applications for the type of facility involved are directed.

G. Division approvals. The division shall grant or confirm any division approval authorized by a provision of 19.15.17 NMAC by written statement. Written statements include e-mail.

H. If the division schedules a hearing on an application, the hearing shall be conducted according to 19.15.14.1206 through 19.15.14.1215 NMAC.

[19.15.17.16 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08; A, 7/16/09]

19.15.17.17 TRANSITIONAL PROVISIONS:

A. After June 16, 2008, the division shall not accept applications for permits for unlined temporary pits.

B. An operator of an existing operation that is required to close pursuant to Paragraphs (2) or (3) of Subsection A of 19.15.17.13 NMAC shall submit a clo-

sure plan pursuant to Subsection C of 19.15.17.9 NMAC to the division not later than 30 days after June 16, 2008. An operator of an existing operation that is required to close pursuant to Paragraphs (1) or (4) of Subsection A of 19.15.17.13 NMAC shall submit a closure plan pursuant to Subsection C of 19.15.17.9 NMAC to the division not later than six months after June 16, 2008. An operator of an existing operation that is required to close pursuant to Paragraph (5) of Subsection A of 19.15.17.13 NMAC shall submit a closure plan pursuant to Subsection C of 19.15.17.9 NMAC to the division prior to the time of requesting a permit transfer. The division must approve the closure plan and the operator must complete closure activities pursuant to the closure requirements of 19.15.17.13 NMAC prior to any sale or change of operator pursuant to 19.15.9.9 NMAC, unless otherwise approved by the division.

C. By no later than October 31, 2009, an operator of an existing lined permitted permanent pit shall submit to the division a list of the lined permitted permanent pit or pits of which it is the operator for registration purposes. The registration list shall include the operator's name, the name of the well or facility with which the lined permitted permanent pit is associated, the API number or facility name, a legal description, global positioning coordinates to the sixth decimal point, the number of lined permitted permanent pits associated with the site and an evaluation if a permit or permit modification is required. Within ~~[180 days]~~ two years after June 16, 2008, an operator of an existing lined permitted permanent pit shall request a modification pursuant to Subsection E of 19.15.17.16 NMAC. Within ~~[180 days]~~ two years after June 16, 2008, an operator of an existing lined registered permanent pit shall apply to the division for a permit pursuant to 19.15.17 NMAC. An operator of an existing lined, permitted or registered, permanent pit shall comply with the construction requirements of 19.15.17.11 NMAC within 18 months after permit modification or issuance.

D. By no later than October 31, 2009, an operator of an existing below-grade tank shall submit to the division a list of the below-grade tank or tanks of which it is the operator for registration purposes. The registration list shall include the operator's name, the name of the well or facility with which the below-grade tank is associated, the API number or facility name, a legal description, global positioning coordinates to the sixth decimal point, the number of below-grade tanks associated with the site and an evaluation if a permit or permit modification is required. An operator of an existing below-grade tank shall apply for

a permit or permit modification pursuant to 19.15.17 NMAC within ~~90 days~~ two years after June 16, 2008. An operator of an existing below-grade tank shall comply with the construction requirements of 19.15.17.11 NMAC ~~[within one year of permit issuance]~~ or prior to any sale or change of operator pursuant to 19.15.9.9 NMAC.

E. An operator of an existing pit or below-grade tank permitted prior to June 16, 2008, may continue to operate in accordance with such permits or orders, subject to the following provisions.

(1) An operator of an existing lined, permitted or registered, permanent pit shall comply with the operational and closure requirements of 19.15.17.12 NMAC and 19.15.17.13 NMAC.

(2) An operator of an existing, permitted or registered, temporary pit shall comply with the operational and closure requirements of 19.15.17.12 NMAC and 19.15.17.13 NMAC.

(3) An operator of an existing below-grade tank shall comply with the operational and closure requirements of 19.15.17.12 NMAC and 19.15.17.13 NMAC.

(4) The operator shall bring an existing below-grade tank that does not comply with the design and construction requirements of 19.15.17.11 NMAC into compliance with those requirements or close it within five years after June 16, 2008.

F. The operator may continue to operate an existing closed-loop system without applying for a permit, but the operator shall close such system in accordance with the closure requirements of 19.15.17.13 NMAC.

G. An operator of an existing sump shall comply with the operational requirements of 19.15.17.12 NMAC. [19.15.17.17 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08; A, 7/16/09]

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

This is an amendment to 19.15.39 NMAC, to add new Sections 9 and 10, effective 7/16/09.

19.15.39.9 SPECIAL PROVISIONS FOR SANTA FE COUNTY AND THE GALISTEO BASIN:

A. Applicability. The operator shall obtain division approval for an exploration and development plan prior to drilling, re-entering or deepening a well located in the Galisteo basin, and shall oper-

ate the wells covered by the exploration and development plan in accordance with the exploration and development plan's requirements until the exploration and development plan is specifically replaced by a special pool order. Approval of an exploration and development plan does not relieve an operator from its responsibility to obtain any permit required pursuant to the Oil and Gas Act for its activities conducted under the exploration and development plan. The operator shall renew an approved exploration and development plan every five years. The Galisteo basin includes:

(1) the surveyed portions of the following sections in Sandoval county:

(a) township 15 north, range 5 east, sections 13 and 25;

(b) township 15 north, range 6 east, sections 10 through 30 and 32 through 36;

(c) township 14 north, range 6 east, sections 1 through 4, 9 through 15, 22 through 26 and 35 and 36;

(d) township 13 north, range 6 east, sections 1 and 2;

(2) the surveyed portions of the following sections in San Miguel county:

(a) township 15 north, range 12 east, sections 19 and 29 through 32;

(b) township 14 north, range 12 east, sections 4 through 10, 13 through 24, and 27 through 33;

(c) township 13 north, range 12 east, sections 4 through 9 and 16 through 21;

(3) the surveyed portions of the following sections in Santa Fe county:

(a) township 17 north, range 10 east, sections 35 and 36;

(b) township 17 north, range 11 east, sections 30 through 32;

(c) township 16 north, range 9 east, sections 26, 34 and 35;

(d) township 16 north, range 10 east, sections 1, 2, 10 through 17, 20 through 28 and 33 through 36;

(e) township 16 north, range 11 east, sections 5 through 8, 16 through 21 and 28 through 33;

(f) township 15 north, range 7 east, sections 7 through 9 and 14 through 36;

(g) township 15 north, range 8 east, sections 19 and 22 through 26;

(h) township 15 north, range 9 east, sections 2 through 4, 7 through 10, 14 through 23 and 25 through 36;

(i) township 15 north, range 10 east, sections 1 through 3, 11 through 13, 24, 25, 30 through 32 and 36;

(j) township 15 north, range 11 east, sections 3 through 36;

(k) township 14 north, range 7 east, sections 1 through 19, 21 through 24, 30 and 31;

(l) township 14 north, range 8 east, sections 1 through 10, 12 through 30 and 36;

(m) township 14 north, range 9 east, all sections;

(n) township 14 north, range 10 east, sections 1, 2 5 through 24, 29 and 30;

(o) township 14 north, range 11 east, sections 1 through 28 and 33 through 36;

(p) township 13 north, range 7 east, sections 6 and 7;

(q) township 13 north, range 8 east, sections 1, 12 through 14, 23 through 26, 35 and 36;

(r) township 13 north, range 9 east, all sections;

(s) township 13 north, range 11 east, sections 1 through 4, 9 through 16, 21 through 24, 27, 28, 33 and 34;

(t) township 12 north, range 8 east, sections 1, 2, 11 through 16, 21 and 22;

(u) township 12 north, range 9 east, sections 2 through 11, 13 through 15, 18, 23 and 24;

(v) township 12 north, range 10 east, sections 18 through 20, 29, 30 and 32 through 36;

(w) township 12 north, range 11 east, sections 3, 4, 9, 10, 15, 16, 21, 22, 28, 29 and 31 through 33;

(x) township 11 north, range 10 east, sections 1 through 4;

(4) the un-surveyed area in Santa Fe county bounded by the surveyed portions of township 14 north, range 8 east, sections 1 through 3, 10 and 12 through 15;

(5) the un-surveyed area in Santa Fe county bounded by:

(a) the surveyed portions of:

(i) township 16 north, range 10 east, sections 17, 20, 21, 28, 33 and 34;

(ii) township 15 north, range 10 east, sections 3, 2, 11 through 13, 24, 25 and 36;

(iii) township 14 north, range 10 east, sections 1, 2, 11, 10, 15, 22, 21, 16, 9, 8 and 5;

(iv) township 15 north, range 10 east, sections 32 through 30;

(v) township 15 north, range 9 east, sections 25, 26, 35, 26, 23, 14, 15, 10, 3 and 2;

(vi) township 16, north, range 9 east, sections 35 and 26;

(b) and then from the north eastern corner of the surveyed portion of township 16 north, range 9 east, section 26 to the northwestern corner of the surveyed portion of township 16 north, range 10 east, section 17;

(6) the un-surveyed area in Santa Fe county bounded by the surveyed portions of:

(a) township 14 north, range 11

east, sections 19 through 21, 28 and 33;

(b) township 13 north, range 11 east, sections 4, 9, 16, 21, 28 and 33;

(c) township 12 north, range 11 east, sections 4, 9, 16, 21, 28, 33, 32, 29 and 31;

(d) township 12 north, range 10 east, sections 36 through 32, 29 and 20 through 18;

(e) township 12 north, range 9 east, sections 24, 13, 14, 11 and 2;

(f) township 13 north, range 9 east, sections 36, 25, 24, 13, 12, 1 and 2;

(g) township 14 north, range 9 east, sections 35, 36, 25, 30, 29 and 20 through 24;

(7) the un-surveyed area in Santa Fe county bounded by:

(a) the surveyed portions of:

(i) township 13 north, range 7 east, sections 7 and 6;

(ii) township 14 north, range 7 east, sections 31, 30, 19 through 16 and 21 through 24;

(iii) township 14 north, range 8 east, sections 30 through 25 and 36;

(iv) township 13 north, range 8 east, sections 1, 12 through 14, 23, 26 and 35;

(v) township 12 north, range 8 east, sections 2, 11 and 14 through 16;

(vi) township 12 north, range 8 east, sections 21 and 22; and

(b) and then from the northwest corner of the surveyed portion of township 12 north, range 8 east, section 16 to the northeast corner of the surveyed portion of township 12 north, range 7 east, and then to the southeast corner of the surveyed portion of township 13 north, range 7 east, section 7.

B. Application for exploration and development plan. An operator applying for approval of an exploration and development plan shall file two copies of the application with the division's Santa Fe office and file a copy of the application with the appropriate division district office or offices. The application shall include:

(1) the operator's name, address and telephone number, with an e-mail address and facsimile number if available;

(2) a legal description of the area to be covered by the exploration and development plan including at a minimum the area subject to surface disturbance by the wells or related facilities the operator proposes to install and the operator's good-faith estimate of the productive area, which in no case may be smaller than the applicable spacing unit or units for the proposed wells;

(3) identification of the target zone or zones;

(4) a topographic map of the area to be covered by the proposed exploration

and development plan and one half mile beyond the boundary of that area;

(5) a map or maps of the area to be covered by the proposed exploration and development plan and one half mile beyond the boundary of that area plotting the following, with global positioning system coordinates to the sixth decimal point for un-surveyed areas:

(a) state, federal, private or tribal surface ownership;

(b) municipal and county boundaries;

(c) farms;

(d) all buildings and infrastructure including but not limited to highways and roads, railroads, pipelines, power lines, antennas, wind turbines, solar farms and mines (surface and subsurface);

(e) watercourses, sinkholes, playas and unstable areas;

(f) municipal fresh water well fields covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended;

(g) water wells and wellhead protection areas;

(h) all existing oil and gas wells regardless of status, including inactive wells, wells that have been plugged and wells that have been plugged and released; and

(i) the location of proposed exploratory wells and related facilities, including but not limited to tank batteries, gathering lines, waste disposal facilities, compressor stations and access roads;

(6) a hydrogeologic and site report that provides sufficient information and detail on the area's topography, soils, geology, surface hydrology and ground water hydrology to enable the division to evaluate the actual and potential effects on soils, surface water and ground water;

(7) proposed plans for:

(a) installing monitor wells to determine depth to water and saturated thickness, obtain baseline water samples and detect releases;

(b) a drilling program describing the air drilling program or mud program to be used;

(c) a mud-logging program, including submission of a copy of the mud log sheet and a description of the mud-logger's daily report, which shall include at a minimum information on the total depth reached, the footage drilled in the preceding 24 hours, oil and gas intervals, fresh water zones and mud parameters including mud weight, chlorides, funnel viscosity and filtrate properties;

(d) addressing wastes generated during the drilling and production processes;

(e) minimizing pad size and consolidating facilities; and

(f) developing the area if the exploratory wells are productive, including the operator's estimate of the number and location of development wells and related facilities;

(8) a written contingency plan for all releases, with no exclusion for de minimus amounts, which shall include:

(a) best management practices for the prevention and detection of releases and procedures for early detection of releases;

(b) instructions for notifying appropriate responders, with a contact list including current names, telephone numbers, e-mail addresses, facsimile numbers and addresses;

(c) identification of applicable equipment, materials and supplies available locally or regionally to respond to releases, with advance arrangements for acquiring the equipment, materials and supplies; and

(d) response plans based on the severity and nature of the release;

(9) if cultural resources listed in either the national register of historic places or the state register of cultural properties, known cemeteries or unmarked human burials are located in the area included in the proposed exploration and development plan or within one half mile of the area included in the exploration and development plan, the information in 4.10.7.9 NMAC including a description of the effects the proposed operations may have on these sites and proposed mitigation measures;

(10) any proposed exceptions to the requirements set out in Subsection B of 19.15.39.10 NMAC and evidence that operating in accordance with the proposed exceptions will prevent waste, protect correlative rights, protect fresh water and protect human health and the environment;

(11) a proposed legal notice complying with Subsection F of 19.15.39.9 NMAC;

(12) other information that the division may require to demonstrate that the exploration and development plan will prevent waste, protect correlative rights, protect fresh water, protect human health and the environment, and will assure the division that operation of the exploration and development plan will comply with division rules and division or commission orders; and

(13) certification by the operator that the information submitted in the application is true, accurate and complete to the best of the operator's knowledge, after reasonable inquiry.

C. Amendments to exploration and development plans. An operator shall obtain an approved amendment to its exploration and development plan prior to expanding the area covered by the plan, increasing the number or changing the loca-

tions of proposed wells or related facilities or changing the terms of the proposed exploration and development plan. An operator applying for an amendment to an exploration and development plan shall file two copies of the application with the division's Santa Fe office and file a copy of the application with the appropriate division district office or offices. The application shall:

(1) describe the proposed amendment or amendments;

(2) update the information provided in the original application pursuant to Subsection B of 19.15.39.9 NMAC; and

(3) provide a proposed legal notice complying with Subsection F of 19.15.39.9 NMAC.

D. Renewals of exploration and development plans.

(1) An operator applying for renewal of its exploration and development plan shall file two copies of the application with the division's Santa Fe office and file a copy of the application with the appropriate division district office or offices. The application shall:

(a) update the information provided pursuant to Subsection B of 19.15.39.9 NMAC; and

(b) provide a proposed legal notice complying with Subsection F of 19.15.39.9 NMAC.

(2) The operator may combine an application to renew its exploration and development plan with an application to amend the exploration and development plan.

E. Replacement of an exploration and development plan with a special pool order.

(1) An operator who has operated wells under an approved exploration and development plan may apply for approval to replace the exploration and development plan with a special pool order. The operator shall demonstrate to the division's satisfaction that the hydrology, geology and reservoir characteristics within the area that the exploration and development plan covers have been sufficiently defined to protect fresh water, human health and the environment.

(2) A special pool order replacing an approved exploration and development plan shall designate a pool applying to a specific producing formation or formations within the area included in the approved exploration and development plan it replaces.

(3) An operator may drill wells within the horizontal and vertical limits of the pool designated by the special pool order and conduct oil and gas operations within the horizontal limits of that pool without obtaining an approved exploration

and development plan that would otherwise be required by 19.15.39.9 NMAC. The operator shall comply with the terms of the special pool order and obtain any permits required for its operations required by law.

(4) A well drilled outside the horizontal limits of the pool designated by the special pool order shall not be classified as a development well for the pool designated by the special pool order pursuant to 19.15.15.8 NMAC and is subject to the requirements of 19.15.39.9 NMAC.

(5) An operator applying for approval to replace the exploration and development plan with a special pool order shall file two copies of the application with the division's Santa Fe office and file a copy of the application with the appropriate division district office or offices. The application shall:

(a) describe provisions to be included in the special pool order to protect fresh water and to protect human health and the environment;

(b) update the information provided pursuant to Subsection B of 19.15.39.9 NMAC; and

(c) provide a proposed legal notice complying with Subsection F of 19.15.39.9 NMAC.

F. Legal notice. Legal notice of an application for a proposed exploration and development plan or an application to amend, renew or replace an existing exploration and development plan shall be written in English and Spanish and shall include:

(1) the operator's name, address and telephone number, and an e-mail address and facsimile number if available;

(2) a legal and a common description of the area that the exploration and development plan covers;

(3) in the case of an application for an exploration or development plan, a summary of the proposed plan including the number and location of proposed exploratory and development wells and related facilities;

(4) in the case of an application to amend an existing exploration and development plan, a summary of the existing exploration and development plan and a summary of the proposed amendment;

(5) in the case of an application to renew an existing exploration and development plan, a summary of the existing exploration and development plan;

(6) in the case of an application to replace an existing exploration and development plan, a summary of the provisions to be included in the special pool order to protect fresh water and protect human health and the environment;

(7) instructions for viewing the application on the division's website or at

the appropriate division district office or offices;

(8) instructions for filing written public comments on the application with the division clerk in the division's Santa Fe office;

(9) if the application has been set for hearing, the date, time and location of the public hearing; and

(10) instructions for being placed on a division contact list to receive notice of future applications and legal notices related to the exploration and development plan.

G. Application completeness.

(1) Within 60 days of receiving an application for an exploration and development plan or an application to amend, renew or replace an existing exploration and development plan, the division shall notify the operator in writing of its determination on whether the application is complete. An application is complete if it contains all the information required by 19.15.39.9 NMAC.

(2) If the division determines that the application is complete, the division shall:

(a) notify the operator in writing that the application is complete;

(b) provide the operator with an approved legal notice;

(c) provide the operator with a copy of the current contact list of individuals and entities requesting notice of actions related to the exploration and development plan;

(d) distribute notice of the application with its next division or commission docket;

(e) post the approved legal notice and the application on the division's website, with information that is confidential under NMSA 1978, Section 18-6-11.1 redacted from the application; and

(f) provide a copy of the complete application to the state historic preservation officer with a request for review and comment.

(3) If the division determines that the application is not complete, the division's written notification to the operator shall identify the deficiencies.

(4) The operator may re-submit an application to correct deficiencies, correct errors or add information. The division's receipt of a re-submittal triggers a new 30 day period for the division to notify the operator of the division's determination on completeness.

H. Public notice. Within 20 days of receiving an approved legal notice and the division's determination that an application is complete, the operator shall:

(1) publish the approved legal notice in English and Spanish in a display

advertisement in a newspaper of general circulation in the affected county or counties;

(2) mail the approved notice by certified mail, return receipt requested, to:

(a) holders of mineral interests in the area covered by the exploration and development plan and the area within one half mile of the boundary of the exploration and development plan if they have not already agreed to participate in the exploration and development plan;

(b) surface interest owners in the area covered by the exploration and development plan and the area within one half mile of the boundary of the exploration and development plan;

(c) the governor, chairperson or president of each tribe, pueblo and nation located in or partially located in New Mexico;

(d) the governments of counties and municipalities located within or partially located within the area covered by the exploration and development plan or the area within one half mile of the boundary of the exploration and development plan;

(e) the state historic preservation officer; and

(f) the department of game and fish; and

(3) mail the approved notice of hearing by first class mail or transmit the notice of hearing by electronic mail to those individuals and entities on the division's contact list for the exploration and development plan.

I. Public hearings.

(1) The division shall set all applications for approval of exploration and development plans for public hearing, with the public hearing to be set no sooner than 60 days after the operator serves public notice.

(2) The division may hold a public hearing on an application to amend, renew or replace an existing exploration and development plan. The division may approve the amendment, renewal or replacement administratively unless the director determines that the amendment, renewal or replacement is sufficiently substantial that public notice and public participation are appropriate.

(3) If the division acts administratively to deny an application to amend, renew or replace an existing exploration and development plan, or acts administratively to approve an amendment, renewal or replacement of an existing exploration and development plan with conditions or terms, the operator may, within 30 days of receipt of the administrative order, file an application for hearing on the application. The division shall set the application for public hearing.

(4) If the division sets for public hearing an application to amend, renew or

replace an existing exploration or development plan, the operator shall submit to the division's Santa Fe office for approval a notice of hearing containing the information required by Subsection F of 19.15.39.9 NMAC and, at least 30 days prior to the hearing date:

(a) publish the approved notice of hearing in a newspaper of general circulation in the county or counties in the area that the exploration and development plan covers and within one half mile of the boundary of the area that the exploration and development plan covers;

(b) mail the approved notice of hearing by to those persons and entities entitled to public notice under Paragraph (2) of Subsection H of 19.15.39.9 NMAC; and

(c) mail the approved notice of hearing by first class mail or transmit the notice of hearing by electronic mail to those individuals and entities on the division's contact list for the exploration and development plan.

J. Plan approvals, conditions, denials, amendments, revocations, renewals, transfers and replacements.

(1) The division may approve an exploration and development plan for a period not to exceed five years. The division may renew an exploration and development plan for additional periods not to exceed five years.

(2) The division may approve an application for an exploration and development plan or an application to amend, renew or replace an existing exploration and development plan if the operator proves that:

(a) the operator is in compliance with Subsection A of 19.15.5.9 NMAC;

(b) the application provides the information required by 19.15.39.9 NMAC;

(c) the operator has provided the notice required by 19.15.39.9 NMAC; and

(d) approval of the application will prevent waste, protect correlative rights, protect fresh water and protect human health and the environment.

(3) The division may impose conditions on its approval of an application for an exploration and development plan or an amendment or renewal of an exploration and development plan if the division determines that the conditions are necessary to prevent waste, protect correlative rights, protect fresh water and protect human health or the environment.

(4) The division may include provisions in a special pool order that replaces an exploration and development plan if the division determines that the provisions are necessary to prevent waste, protect correlative rights, protect fresh water or protect human health and the environment.

(5) After notice to the operator and hearing, the division may revoke

approval of an exploration and development plan and require wells that the exploration and development plan covers to be shut-in if the operator is out of compliance with the exploration and development plan or is out of compliance with Subsection A of 19.15.5.9 NMAC.

(6) If an exploration and development plan expires and the operator has not filed an application to renew the exploration and development plan, the operator shall shut-in the wells that the exploration and development plan covers. If the operator has filed an application to renew the exploration and development plan prior to its expiration, the operator may continue to operate wells that the exploration and development plan covers until a final order is issued on the application for renewal.

(7) The exploration and development plan shall remain in effect until revoked, amended or replaced pursuant to 19.15.39.9 NMAC.

(8) In the event another operator becomes operator of record of wells subject to the exploration and development plan, the new operator shall be bound by the terms of the applicable approved exploration and development plan or special pool order.

(9) Approval of an exploration and development plan or an application to amend, renew or replace an exploration and development plan does not relieve an operator of responsibility for complying with any other applicable federal, state or local statutes, rules or regulations or ordinances. [19.15.39.9 NMAC - N, 7/16/09]

19.15.39.10 ADDITIONAL REQUIREMENTS FOR APPLICATIONS TO DRILL, RE-ENTER OR DEEPEN WELLS SUBJECT TO AN EXPLORATION AND DEVELOPMENT PLAN:

A. An application for permit to drill, re-enter or deepen a well that requires an exploration and development plan pursuant to 19.15.39.9 NMAC shall include the following in addition to meeting the requirements set out in 19.15.14 NMAC:

(1) a permit application pursuant to 19.15.17 NMAC;

(2) global positioning system coordinates to the sixth decimal point to identify the location of a well to be drilled in an un-surveyed area; and

(3) any additional information required by the operator's approved exploration and development plan.

B. Unless otherwise specified in an approved exploration and development plan, a permit to drill, re-enter or deepen a well that requires an exploration and development plan shall be subject to the following conditions:

(1) the operator shall drill the well using a closed loop system that uses above ground steel tanks for the management of drilling or workover fluids without using below-grade tanks or pits;

(2) the operator shall not use the on-site closure methods identified in Subsection F of 19.15.17.13 NMAC;

(3) the operator shall run logs from total depth to surface that will determine porosity and water saturation;

(4) a mud-logger shall be on site during drilling from surface to total depth and shall submit the logs and a written report daily to the supervisor of the appropriate district office;

(5) the operator shall isolate all fresh water zones and aquifers throughout their vertical extent with at least two cemented casing strings;

(6) the operator shall circulate cement to surface on all casing strings, except that the smallest diameter casing shall have cement to at least 100 feet above the casing shoe of the next larger diameter casing;

(7) the operator shall run cement bond logs acceptable to the division after each casing string is cemented and file the logs with the appropriate district office; and

(8) the operator of a well awaiting gas pipeline connection shall place that well on approved temporary abandonment status, setting a drillable bridge plug above any open perforations.

[19.15.39.10 NMAC - N, 7/16/09]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

This is an emergency amendment to 2.42.2 NMAC, Section 11, effective June 19, 2009

2.42.2.11 MILEAGE-PRIVATE CONVEYANCE:

A. **Applicability:** Mileage accrued in the use of a private conveyance shall be paid only in accordance with the provisions of this Section.

B. **Rate:** Public officers and employees of state agencies shall be reimbursed for mileage accrued in the use of a private automobile or aircraft in the discharge of official duties as follows:

(1) ~~privately owned automobile, thirty two cents (\$0.32) per mile;~~ unless the secretary has reduced the rates set for mileage for any class of public officials and for employees of state agencies pursuant to Section 10-8-5 (D) NMSA 1978, 80% of the internal revenue service standard mileage rate set January 1 of the previous year for each mile traveled in a privately owned

vehicle;

(2) privately owned airplane, eighty-eight cents (\$0.88) per nautical mile.

C. **Local public bodies:** Public officers and employees of local public bodies may be reimbursed for mileage accrued in the use of a private conveyance in the discharge of official duties, at the statutory rates unless such rates have been reduced by the governing bodies of the local public body pursuant to Section 10-8-5 (D) NMSA 1978.

D. **Privately owned automobile:** For conveyance in the discharge of official duties by privately owned automobile, mileage accrued shall be reimbursed at the rate set forth in this section as follows:

(1) pursuant to the mileage chart of the official state map published by the state highway and transportation department for distances in New Mexico and the most recent edition of the Rand-McNally road atlas for distances outside of New Mexico; or

(2) pursuant to actual mileage if the beginning and ending odometer reading is certified as true and correct by the traveler; and

(a) the destination is not included on the official state map or on the Rand McNally road atlas, or,

(b) at the destination(s) of the public officer or employee, the public officer or employee was required to use the private conveyance in performance of official duties.

E. **Privately owned airplane:** Mileage accrued in the use of a privately owned airplane shall be reimbursed at the rate set forth in this section as follows:

(1) pursuant to the New Mexico aeronautical chart published by the state highway and transportation department, aviation division, for distances in New Mexico and other states' air maps for distances outside of New Mexico; or

(2) pursuant to actual air mileage if certification is provided by the pilot, or a beginning and ending reading of actual mileage if the reading is certified as true and correct by the traveler, and the destination is not included on an air map.

F. **Reimbursement limit for out of state travel:** Total mileage reimbursement for out of state travel by privately owned automobile or privately owned airplane shall not exceed the total coach class commercial airfare that would have been reimbursed those traveling had they traveled by common carrier. This subsection shall not apply to a public school when transporting students.

G. **Additional mileage provision:** Mileage accrued while on official business shall be reimbursed for travel

on official business. An agency head or designee may authorize by memorandum reimbursement for mileage from a point of origin farther from the destination than the designated post of duty in appropriate circumstances. The memorandum must accompany the payment voucher. If official business is transacted while commuting from home to post of duty or from post of duty to home, mileage shall not be paid for the number of miles between post of duty and home. Odometer readings showing additional miles accrued for official business must be provided to the agency for payment.

[2.42.2.11 NMAC - Rn, DFA Rule 95-1, Section 6 & A, 07/01/03; A/E, 06/19/09]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Repeal

1.18.631 NMAC, Executive Records Retention and Disposition Schedule for the Department of Labor filed March 12, 2002, is being repealed and replaced with the new 1.18.631 NMAC, Executive Records Retention and Disposition Schedule for the Department of Workforce Solutions, effective August 3, 2009. The New Mexico Commission of Public Records at their June 30, 2009 meeting repealed the current rules and approved the new rules.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

June 30, 2009

Leo R. Lucero, Agency Analysis Bureau Chief
NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rules:

- * 1.18.333 NMAC ERRDS, Taxation and Revenue Department,
- * 1.18.631 NMAC ERRDS, Department of Workforce Solutions, and
- * 1.18.667 NMAC ERRDS, New Mexico Department of Environment.

A review of these rules shows that their impact is limited to the individual agency to which they pertain, and it is "unduly cum-

bersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis in lieu of the full content of each rule is approved.

Sincerely,

Sandra Jaramillo
State Records Administrator

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.631 NMAC ERRDS, Department of Workforce Solutions

1. Subject matter: 1.18.631 NMAC, Executive Records Retention and Disposition Schedule for the Department of Workforce Solutions. This is a replacement to 1.18.631 NMAC, ERRDS, Department of Labor schedule and replacing it with the Department of Workforce Solutions schedule. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This records retention and disposition schedule was developed by the State Records Center and Archives (New Mexico Commission of Public Records), and approved by the State Records Administrator, the Cabinet Secretary of the Department of Workforce Solutions, and legal counsel for the Department of Workforce Solutions.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Department of Workforce Solutions. Persons and entities normally subject to the rules and regulations of the Department of Workforce Solutions may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Department of Workforce Solutions.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Department of Workforce Solutions. Any person or entity outside the covered geographical area that conducts business with or through the Department of Workforce Solutions may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes

Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: August 3, 2009.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.631 NMAC ERRDS, Department of Workforce Solutions.

Stephen Vigil Date
Assistant Attorney General

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.333 NMAC ERRDS, Taxation and Revenue Department

1. Subject matter: 1.18.333 NMAC, Executive Records Retention and Disposition Schedule for the Taxation and Revenue Department. This is an amendment to 1.18.333 NMAC, ERRDS, Taxation and Revenue Department, repealing Sections 142 and 143, amending Sections 7, 8, 100 and 146, and adding Sections 106, 107, 149, 210 - 213, 217 and 218. The records retention and disposition schedule is a timetable for the management of specific records series of the Taxation and Revenue Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the

Taxation and Revenue Department.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Taxation and Revenue Department. Persons and entities normally subject to the rules and regulations of the Taxation and Revenue Department may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Taxation and Revenue Department.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Taxation and Revenue Department. Any person or entity outside the covered geographical area that conducts business with or through the Taxation and Revenue Department may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: August 3, 2009.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.333 NMAC ERRDS, Taxation and Revenue Department.

Stephen Vigil Date
Assistant Attorney General

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.667 NMAC ERRDS, Department of Environment

1. Subject matter: 1.18.667 NMAC, Executive Records Retention and Disposition Schedule for the Department of Environment. This is an amendment to

1.18.667 NMAC, ERRDS, Department of Environment repealing Sections 285 and 286, amending Section 7 and adding Sections 287, 288, 290, 291 and 292. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This records retention and disposition schedule was developed by the State Records Center and Archives (New Mexico Commission of Public Records), and approved by the State Records Administrator, the Cabinet Secretary of the Department of Environment, and legal counsel for the Department of Environment.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Department of Environment. Persons and entities normally subject to the rules and regulations of the Department of Environment may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Department of Environment.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Department of Environment. Any person or entity outside the covered geographical area that conducts business with or through the Department of Environment may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: August 3, 2009.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.667 NMAC ERRDS, Department of Environment.

Stephen Vigil _____ Date
Assistant Attorney General

NEW MEXICO SIGNED LANGUAGE INTERPRETING PRACTICES BOARD

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 28 SIGNED LANGUAGE INTERPRETERS
PART 1 GENERAL PROVISIONS**

16.28.1.1 ISSUING AGENCY: Regulation and Licensing Department, Signed Language Interpreting Practices Board
[16.28.1.1 NMAC - N, 07/21/09]

16.28.1.2 SCOPE: Any person licensed to practice interpreting.
[16.28.1.2 NMAC - N, 07/21/09]

16.28.1.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17
[16.28.1.3 NMAC - N, 07/21/09]

16.28.1.4 DURATION: Permanent
[16.28.1.4 NMAC - N, 07/21/09]

16.28.1.5 EFFECTIVE DATE: July 21, 2009, unless a later date is cited at the end of this section.
[16.28.1.5 NMAC - N, 07/21/09]

16.28.1.6 OBJECTIVE: The objective of Part 1 is to set forth the provisions, which apply to all of Chapter 28, and to all persons affected or regulated by Chapter 28 of Title 16.
[16.28.1.6 NMAC - N, 7/21/09]

16.28.1.7 DEFINITIONS: As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

- A.** "Accredited" means approved by the:
 - (1) New England association of schools and colleges;
 - (2) middle states association of colleges and secondary schools;
 - (3) north central association of colleges and schools;
 - (4) northwest association of schools and colleges;
 - (5) southern association of colleges and schools; or
 - (6) western association of schools and colleges.
- B.** "ACET" refers to the associate continuing education tracking sys-

tem within RID.

C. "Act" means the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17.

D. "Administrator" or "board administrator" means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulations or as required to carry out the provisions of the act.

E. "Adult" means the all persons 18 years of age or older.

F. "Applicant" means a person who has completed all educational requirements of the eligibility requirements for licensure and has submitted a complete application to the board. An applicant is seeking approval of his or her application by the board to advance him or her to candidacy for licensure.

G. "Board" means the signed language interpreting practices board.

H. "Board regulations" or "regulations" means any part adopted by the board pursuant to authority under the act and includes any superseding regulation.

I. "CEU" refers continuing education units as is used by the registry of interpreters for the deaf.

J. "CMP" means the certification maintenance program as is used by the registry of interpreters for the deaf.

K. "Consumer" means a person using the services of a signed language interpreter.

L. "Confidential communication" means a communication that is not intended to be disclosed to third persons other than those present to further the interest of the person requiring the interpreting.

M. "Deaf person" means a person who has either no hearing or who has significant hearing loss.

N. "Deaf-blind person" means a person who has either no hearing or who has significant hearing loss and a significant vision loss.

O. "Department" means the New Mexico regulation and licensing department.

P. "EIPA" refers to the educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

Q. "Filed with the board" means hand delivered or postal mail received during normal business hours by the board office in Santa Fe, New Mexico.

R. "Hard-of-hearing person" means a person who has either no hearing or who has significant hearing loss.

S. "Interpreter" means a person who practices interpreting.

T. "Interpreter education program" or "interpreter preparation program" means a post-secondary degree program of at least two year's duration accredited by the state or similar accreditation by another state, district or territory; or a substantially equivalent education program approved by the board.

U. "Interpreting" means the process of providing accessible communication between deaf, hard of hearing, or deaf-blind persons and hearing persons, including communication between signed language and spoken language and other modalities such as visual, gesture and tactile methods, not to include written communication. A person is interpreting if the person advertise, offers to practice, is employed in a position described as interpreting or hold out to the public or represents in any manner that the person is an interpreter in New Mexico

V. "Licensee" means an interpreter who holds a current license issued under the act and these rules.

W. "NAD" means the national association of the deaf.

X. "New Mexico administrative code" or "NMAC", Section 14-4-7.2 NMSA 1978 is the official compilation of current rules filed by state agencies in accordance with New Mexico statutes.

Y. "New Mexico statutes annotated 1978 or NMSA 1978" is the official compilation of state laws.

Z. "Open Meetings Act" or "OMA", 10-15-1 through 10-15-4 NMSA 1978 is the statutory provision requiring that public business be conducted in full public view; providing guidelines governing both public and closed meetings, and regulating the notice, agenda and minutes of such meetings.

AA. "Properly made application" means a completed application form for a signed language interpreter filed with the board that is complete in all particulars and appears on its face to satisfy all minimum age, educational, supervision, payment and other requirements except examination requirements for licensure as required by the act and these regulations.

BB. "RID" refers to the registry of interpreters for the deaf, which is a national association of signed language interpreters.

CC. "Rule" means board regulations.

DD. "State Rules Act", Sections 14-4-1 through 14-4-5 NMSA 1978, is the statutory provision that ensures that state agencies file with the state records center and archives all rules and regulations including amendments or repeals.

EE. "Statute" means a law that governs conduct within its scope. A bill passed by the legislature becomes a statute;

and "statutory authority" means the boundaries of the board's lawful responsibility as laid out by the statute that created it.

FF. "Substantial compliance" means sufficient compliance with the statutes or rules so as to carry out the intent for which the statutes or rules were adopted and in a manner that accomplished the reasonable objective of the statutes or rules.

GG. "Supervised interpreter intern or student" means a person who is currently enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning.

HH. "Uniform Licensing Act" or "ULA", Section 61-1-1 through 61-1-33 NMSA 1978 is the statutory provision that governs the major duties of the board in area of:

(1) procedures which must be followed to accord due process to applicants for licensure and to licensees if the board takes action against the licensee for acts of misconduct that would adversely affect public health, safety and welfare, and

(2) rulemaking procedures that the board shall follow in adopting valid regulations affecting signed language interpreters.

[16.28.1.7 NMAC - N, 07/21/09]

16.28.1.8 BOARD OPERATIONS:

A. Elections. At its annual meeting in July, the board shall elect a chair and vice-chair.

B. Duties of officers. All board officers shall exercise authority subject to the act, board regulations, and specific directions of the board.

(1) The chair shall preside at board meetings and adjudicatory hearings unless another presiding officer is named by the board. The chair may respond to inquiries and correspondence, execute orders of the board in any pending adjudicatory proceeding unless a hearing officer is appointed, or designate another board member to sign decisions of the board, appoint board members to formal committees, and provide direction to the board administrator on routine matters to facilitate the efficient operation of board functions between meetings.

(2) If the chair becomes vacant, the vice chair shall serve as chair until a new chair is elected.

C. Vacancy. If the office of board chair becomes vacant, the board shall elect a chair at the next meeting or any subsequent meeting. If the office of vice chair becomes vacant, the board may hold elections as it deems necessary and advisable.

D. Duties of board administrator. The board administrator or

designee shall at all times perform those tasks directed by the board pursuant to those duties prescribed by the act, board regulations, the ULA, Sections 61-1-1 through 61-1-33 NMSA 1978, and other applicable state laws. In addition, the board administrator shall assume the role of custodian of records.

E. Board meetings. The board shall conduct meeting in an orderly fashion, with due regard for each board member and the public. The board may refer to Robert's Rules of Order, Revised, when necessary and advisable.

F. Quorum. The board shall transact official business only at a legally constituted meeting with a quorum present. A quorum shall consist of four (4) members.

G. Complaint committee. the board chair shall appoint a complaint committee consisting of at least one board member.

H. Addressing the board. Except for proceedings to adopt, amend, or repeal regulations in accordance with the ULA, Section 61-1-29 NMSA 1978, the board at its sole discretion, may provide a reasonable opportunity for persons attending an open meeting to address the board on an agenda item. The request to speak shall be timely made and shall not delay or disrupt the board's meeting. No person shall be permitted to address the board on any pending or concluded application, complaint, investigation, adjudicatory proceeding, or matter in litigation, except to confer for the purpose of settlement or adjudicatory proceeding, or matter in litigation, except to confer for the purpose of settlement or simplification of the issues. Any public comment to the board shall be brief, concise, and relevant to the agenda item. The board may limit the total time allotted for comments and the time allotted to any person.

I. Telephone attendance. Pursuant to the OMA, Section 10-15-1 (C) NMSA 1978, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, and shall give advance notice to the board administrator an ample time to arrange such accommodation.

J. Conflict of interest, recusal. Any board member who cannot be impartial in the determination of a matter before the board and who cannot judge a particular matter or controversy fairly on the basis of its own merits shall not participate in any board deliberation or vote on the matter.

K. Confidentiality. Board members shall not disclose to any non-member content of any executive session,

or any other confidential matters that may be the subject of an executive session or attorney-client privileged communications except as ordered by a court of competent jurisdiction or where the board knowingly and intentionally permits disclosure.

L. Code of conduct.

Board members shall adhere to the standards set forth in the Governmental Conduct Act, Section 10-16-1 through 10-16-18 NMSA 1978.

[16.28.1.8 NMAC - N, 07/21/09]

16.28.1.9 BOARD RECORDS:

A. Inspection of Public Records Act ("IPRA"). Public records shall be available for inspection in accordance with the provisions of the IPRA, Section 14-2-1 through 14-2-12 NMSA 1978 and Section 61-9-5.1 NMSA 1978.

B. Removal. Public records shall not be removed from the board office except by board member, board staff, or agents of the board for official public business.

[16.28.1.9 NMAC - N, 07/21/09]

HISTORY OF 16.28.1 NMAC:
[RESERVED]

**NEW MEXICO
SIGNED LANGUAGE
INTERPRETING
PRACTICES BOARD**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 28 SIGNED LANGUAGE INTERPRETERS
PART 2 EDUCATION AND CONTINUING EDUCATION REQUIREMENTS**

16.28.2.1 ISSUING AGENCY: Regulation and Licensing Department, Signed Language Interpreting Practices Board.

[16.28.2.1 NMAC - N, 07/21/09]

16.28.2.2 SCOPE: Any person licensed to practice interpreting.
[16.28.2.2 NMAC - N, 07/21/09]

16.28.2.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17.
[16.28.2.3 NMAC - N, 07/21/09]

16.28.2.4 DURATION: Permanent
[16.28.2.4 NMAC - N, 07/21/09]

16.28.2.5 EFFECTIVE DATE: July 21, 2009, unless a later date is cited at

the end of this section.
[16.28.2.5 NMAC - N, 07/21/09]

16.28.2.6 OBJECTIVE: The objective of Part 2 is to establish the minimum education requirements for applicants applying for licensure and to establish the continuing education requirements for license renewal.

[16.28.2.6 NMAC - N, 07/21/09]

16.28.2.7 DEFINITIONS:
[Reserved]
[Refer to 16.28.1.7 NMAC]

16.28.2.8 EDUCATION REQUIREMENTS: The board shall issue a license as a signed language interpreter to an applicant, otherwise qualified, who furnishes evidence satisfactory to the board that the applicant has fulfilled the degree requirements for certification as established by RID.

[16.28.2.8 NMAC - N, 07/21/09]

16.28.2.9 CONTINUING EDUCATION REQUIREMENTS:

A. Community or educational signed language interpreter license shall submit a copy of the applicant's current RID membership card documenting compliance with the requirements of the certification maintenance program (CMP);

B. Provisional license: Two CEUs (20 hours) of continuing education annually documented on the applicant's associate continuing education tracking (ACET) transcript from RID.

[16.28.2.9 NMAC - N, 07/21/09]

HISTORY OF 16.28.2 NMAC:
[RESERVED]

**NEW MEXICO
SIGNED LANGUAGE
INTERPRETING
PRACTICES BOARD**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 28 SIGNED LANGUAGE INTERPRETERS
PART 3 APPLICATION AND LICENSURE REQUIREMENTS**

16.28.3.1 ISSUING AGENCY: Regulation and Licensing Department, Signed Language Interpreting Practices Board
[16.28.3.1 NMAC - N, 07/21/09]

16.28.3.2 SCOPE: The provisions of Part 3 apply to all applicants for licensure.
[16.28.3.2 NMAC - N, 07/21/09]

16.28.3.3 STATUTORY

AUTHORITY: These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17.

[16.28.3.3 NMAC - N, 07/21/09]

16.28.3.4 DURATION: Permanent
[16.28.3.4 NMAC - N, 07/21/09]

16.28.3.5 EFFECTIVE DATE: July 21, 2009, unless a later date is cited at the end of this section.
[16.28.3.5 NMAC - N, 07/21/09]

16.28.3.6 OBJECTIVE: The objective of Part 3 is to establish requirements and procedures to apply for licensure, to renew licenses, to place provisional licenses on inactive status, to establish grounds for license denial, suspension, or revocation, and to establish exemptions from licensure.

[16.28.3.6 NMAC - N, 07/21/09]

16.28.3.7 DEFINITIONS:
[Reserved]
[Refer to 16.28.1.7 NMAC]

16.28.3.8 COMMUNITY SIGNED LANGUAGE INTERPRETER LICENSE: A community signed language interpreter's license entitles its holder to provide signed language interpreting services in community, K-12 educational, and post-secondary educational settings as appropriate under the NAD-RID code of professional conduct.

[16.28.3.8 NMAC - N, 07/21/09]

16.28.3.9 EDUCATIONAL SIGNED LANGUAGE INTERPRETER LICENSE: An educational signed language interpreter's license entitles its holder to provide signed language interpreting services in K-12 educational settings as appropriate under the NAD-RID code of professional conduct.

[16.28.3.9 NMAC - N, 07/21/09]

16.28.3.10 PROVISIONAL SIGNED LANGUAGE INTERPRETER LICENSE: A provisional signed language interpreter's license entitles its holder to provide signed language interpreting services in community and educational settings as appropriate under the NAD-RID code of professional conduct for a maximum of five years while working to satisfy the requirements for a community signed language interpreter's license or an educational signed language interpreter's license.
[16.28.3.10 NMAC - N, 07/21/09]

16.28.3.11 APPLICATION FOR LICENSURE:
A. An application for any

license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.

B. All applications for licensure must include:

(1) a completed and signed application;

(2) applicant name;

(3) proof of age indicating applicant is at least eighteen years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(4) mailing address;

(5) business address;

(6) phone number;

(7) non-refundable application fee as required by the board;

(8) photograph: applicants for original licensure shall attach a recent passport size, color photograph, front-view of face.

C. An application for a community signed language interpreter license must also include: a copy of the applicant's current RID membership card showing that the applicant holds one or more certifications recognized by RID at the time of application for licensure with the exception of ED: K-12 (educational certificate: K-12).

D. An application for an educational signed language interpreter license must also include: proof of EIPA rating of 4.0 – 5.0 and a copy of the applicant's current RID membership card showing that the applicant holds the ED: K-12 certified member status by virtue of EIPA rating; or a copy of the applicant's current RID membership card showing that the applicant holds one or more certifications currently recognized by RID.

E. An application for a provisional signed language interpreter license must also include: proof of completion of an interpreter education program or interpreter preparation program at an accredited institution; or proof of employment as a community signed language interpreter or an educational signed language interpreter at the time the act became effective.

[16.28.3.11 NMAC - N, 07/21/09]

16.28.3.12 REQUIREMENTS FOR A LICENSE FOR A COMMUNITY SIGNED LANGUAGE INTERPRETER:

A license for a community signed language interpreter shall be granted to a person who:

A. files a completed application that is accompanied by the required fees; and,

B. submits satisfactory evidence that the person:

(1) has reached the age of majority;

and,

(2) is of good moral character;

(3) has completed all educational requirements established by the board;

(4) holds certification recognized at the time of application by the registry of interpreters for the deaf (RID) with the exception of ED: K-12 (educational certificate: K-12); and

(5) complies with the registry of interpreters for the deaf (RID) certification maintenance program (CMP).

[16.28.3.12 NMAC - N, 07/21/09]

16.28.3.13 REQUIREMENTS FOR A LICENSE FOR AN EDUCATIONAL SIGNED LANGUAGE INTERPRETER: A license for an educational signed language interpreter shall be granted to a person who:

A. files a completed application that is accompanied by the required fees; and,

B. submits satisfactory evidence that the person:

(1) has reached the age of majority;

(2) is of good moral character;

(3) has completed all educational requirements established by the board;

(4) has passed the educational interpreter written and performance assessment (EIPA) with a score of 4.0 – 5.0 and holds ED: K-12 (educational certification: K-12) recognized at the time of application by the registry of interpreters for the deaf (RID); and

(5) complies with the registry of interpreters for the deaf (RID) certification maintenance program (CMP).

[16.28.3.13 NMAC - N, 07/21/09]

16.28.3.14 REQUIREMENTS FOR A ONE-TIME, FIVE-YEAR PROVISIONAL LICENSE TO A PERSON NOT MEETING THE COMMUNITY SIGNED LANGUAGE INTERPRETER OR EDUCATIONAL SIGNED LANGUAGE INTERPRETER REQUIREMENTS FOR LICENSURE: A one-time, five-year provisional license shall be granted to a person who:

A. files a completed application that is accompanied by the required fees; and,

B. has completed an interpreter education program or interpreter preparation program at an accredited institution; or

C. is employed as a community signed language interpreter or an educational signed language interpreter at the time the act became effective.

[16.28.3.14 NMAC - N, 07/21/09]

16.28.3.15 INITIAL LICENSE: Initial licenses expire on September 30th, in the second year of licensure. No license will

be issued for longer than 28 months.

[16.28.3.15 NMAC - N, 07/21/09]

16.28.3.16 LICENSE EXPIRATION:

A. After the initial license period, community signed language interpreter licenses expire every two years on September 30th.

B. After the initial license period, educational signed language interpreter licenses expire every two years on September 30th.

C. After the initial license period, provisional signed language interpreter licenses expire every year on September 30th.

[16.28.3.16 NMAC - N, 07/21/09]

16.28.3.17 LICENSE RENEWAL:

A. A licensee may renew a community signed language interpreter license or an educational signed language interpreter license every two years by:

(1) submitting a completed renewal application provided by the board that is accompanied by the required fees; and

(2) submitting the continuing education requirements as specified in 16.28.2.9 NMAC.

B. A licensee may renew a provisional interpreter license every year for up to four years by:

(1) submitting a completed renewal application provided by the board that is accompanied by the required fees; and

(2) submitting the continuing education requirements as specified in 16.28.2.9 NMAC.

C. If a license is not renewed by the expiration date, the license shall be considered expired, and the licensee shall refrain from practicing. The licensee may renew within a sixty-day grace period, which begins the first day the license expires, by submitting payment of the renewal fee and complying with all renewal requirements. Upon renewal of license, the licensee may resume practice.

[16.28.3.17 NMAC - N, 07/21/09]

16.28.3.18 INACTIVE STATUS FOR PROVISIONAL LICENSEES:

A. A provisional licensee whose license is in good standing with the board may request his/her license to be placed on inactive status for the purpose of pursuing education or training that will assist the licensee in obtaining licensure as a community signed language interpreter or an educational signed language interpreter by meeting the following requirements.

(1) Complete, sign, and return the inactive status application form provided by

the board, specifying the intent to be placed on inactive status.

(2) Submit verifications for the required number of continuing education hours.

(3) Return the application post-marked on or before the license expiration date.

B. Inactive status notification: Upon receipt of a duly and properly made application for inactive status, the board or its designee will review and approve the application and send the licensee written verification that the license has been placed on inactive status.

C. During the period of inactive status, the licensee is prohibited from practicing signed language interpreting in the state of New Mexico and must be actively working toward obtaining licensure as a community signed language interpreter or an educational signed language interpreter.

D. Reporting requirement: any licensee who has placed his or her license on inactive status must submit transcripts to the board by June 30 of every year as verification of the licensee's pursuit of education or training to obtain licensure.

E. Notification of intent to reactivate license: Any licensee who has placed his or her license on inactive status may, within five years from the official date his or her license was placed on inactive status, notify the board in writing of his/her desire to practice in New Mexico. The applicant shall provide the following information:

- (1) a New Mexico license number;
- (2) the applicants full name;
- (3) the applicants home address and phone number;
- (4) the date the applicant's license was originally issued;
- (5) the date the applicant's license was placed on inactive status;

F. Reactivation process: Upon receipt of the written request, the board shall place the licensee on active status once the licensee submits approved continuing education hours required for activation of his/her license.

[16.28.3.18 NMAC - N, 07/21/09]

16.28.3.19 EXEMPTIONS: Persons falling under the exemptions listed in Section 61.34.5 NMSA 1978, are not required to apply for licensure or otherwise notify the board of their exempted interpreting practice.

[16.28.3.19 NMAC - N, 07/21/09]

HISTORY OF 16.28.3 NMAC:
[RESERVED]

NEW MEXICO SIGNED LANGUAGE INTERPRETING PRACTICES BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 28 SIGNED LAN- GUAGE INTERPRETERS PART 4 COMPLAINT PRO- CEDURES; ADJUDICATORY PRO- CEEDINGS

16.28.4.1 ISSUING AGENCY: Regulation and Licensing Department, Signed Language Interpreting Practices Board
[16.28.4.1 NMAC - N, 07/21/09]

16.28.4.2 SCOPE: The provisions of Part 4 shall apply to all licensees and applicants for license entitled to notice and hearing under the Uniform Licensing Act, ("ULA") Section 61-1-1 through 61-1-33 NMSA 1978 and to any interested person who may file a complaint against a licensee or applicant.
[16.28.4.2 NMAC - N, 07/21/09]

16.28.4.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, Section 61-44-1 through 61-44-17.
[16.28.4.3 NMAC - N, 07/21/09]

16.28.4.4 DURATION: Permanent
[16.28.4.4 NMAC - N, 07/21/09]

16.28.4.5 EFFECTIVE DATE: July 21, 2009, unless a later date is cited at the end of this section.
[16.28.4.5 NMAC - N, 07/21/09]

16.28.4.6 OBJECTIVE: The objective of Part 4 is to establish procedures for filing, processing, and investigating complaints against licensees and applicants and establishes procedures for the conduct of disciplinary proceedings.
[16.28.4.6 NMAC - N, 07/21/09]

16.28.4.7 DEFINITIONS:
[Reserved]
[Refer to 16.28.1.7 NMAC]

16.28.4.8 COMPLAINT PROCEDURES:

A. Inquiries regarding filing of complaints.

(1) Inquiries made to the board or to a board member regarding a potential complaint will be referred to the board administrator for a response.

(2) Upon receipt of an inquiry, the board administrator shall forward to the potential complainant a statement regarding the board's jurisdiction, the conduct or grounds for possible action by the board against a licensee or applicant, and a complaint form with instructions on how to file the complaint. Complaints should be submitted in writing on the prescribed form, signed and notarized, and state the facts upon which the complaint is based, however, oral complaints may be received and investigated. An oral complaint submitted to the board administrator shall be in an audio, visual or audiovisual format. After the complaint committee reviews the complaint facts and determines there is cause for further investigation, the complainant shall resubmit the complaint in writing on a form provided by the board, signed, notarized and submitted to the board administrator. Anonymous complaints will not be investigated, unless the board determines an exception is valid due to unusual circumstances.

(3) Once a complaint is made, it will come under the provisions of this section and cannot be withdrawn.

B. Procedures for processing complaints. The board administrator shall:

(1) log in the date the complaint is received;

(2) determine if the subject of the complaint is a licensed signed language interpreter or an applicant or person otherwise within the jurisdiction of the board;

(3) assign an individual file with a complaint number, which numbering sequence shall begin each new calendar year;

(4) forward the complaint file to the complaint committee; and

(5) send a letter to the complainant confirming receipt of the complaint.

C. Review by the complaint committee.

(1) The complaint committee will handle complaints in a confidential manner as required by law.

(2) The complaint committee will review all complaints received by the board.

(3) Upon its review of a complaint, the complaint committee will present a summary of the case to the board and submit its recommendations to the board.

(4) The complaint committee, on behalf of the board, may issue investigative subpoenas.

D. Review by the board.

(1) Any board member who is partial or believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances shall not participate in the decision whether to issue a

notice of contemplated action and shall not participate in the hearing, deliberation, or decision of the board.

(2) The board shall review the case summary presented by the complaint committee relevant documents, witness statements, and other pertinent information regarding the complaint. If the board has sufficient evidence that a violation may have occurred, the board shall forward the evidence to the administrative prosecutor for issuance of a notice of contemplated action.

(3) Following the issuance of a notice of contemplated action, the board may at its option, authorize a board member, the hearing officer, or the administrative prosecutor to confer with the applicant or the licensee for the purpose of settlement of the complaint. Such settlement must be approved by the board, must be with the consent of the applicant or licensee, and shall include a knowing and intentional waiver by the applicant or the licensee, and shall include a knowing and intentional waiver by the applicant or his rights to hearing under the Uniform Licensing Act.

(4) The board may refer a complaint to the attorney general for injunctive proceeding or to the district attorney for criminal prosecution.

[16.28.4.8 NMAC - N, 07/21/09]

16.28.4.9 DISCIPLINARY HEARINGS:

A. All hearings will be conducted in accordance with the Uniform Licensing Act.

B. The chair of the board will serve as hearing officer, unless the board appoints a hearing officer.

C. If the board appoints a hearing officer, the hearing officer will be fully authorized to make all necessary procedural decisions on behalf of the board, including but not limited to matters related to discovery, continuances, time extensions, amendments, pre-hearing conferences, and proposed findings of fact and conclusions of law.

D. The hearing officer may make such orders as he or she deems necessary to implement the authority conferred by Subsection A of 16.28.4.9 NMAC.

[16.28.4.9 NMAC - N, 07/21/09]

16.28.4.10 SURRENDER OF LICENSE:

A. If a license is restricted, suspended, or revoked by the board for any reason specified in the rules and regulations of the board or in the act, the licensee shall immediately surrender his or her license in person or by registered mail to the board.

B. If the licensee's scope of practice is restricted or limited or otherwise subject to conditions, the license may

reflect the restriction, limitations, or condition.

[16.28.4.10 NMAC - N, 07/21/09]

HISTORY OF 16.28.4 NMAC: [RESERVED]

NEW MEXICO SIGNED LANGUAGE INTERPRETING PRACTICES BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 28 SIGNED LAN- GUAGE INTERPRETERS PART 5 CODE OF PROFES- SIONAL CONDUCT

16.28.5.1 ISSUING AGENCY: Regulation and Licensing Department, Signed Language Interpreting Practices Board

[16.28.5.1 NMAC - N, 07/21/09]

16.28.5.2 SCOPE: Any and all individuals licensed under the New Mexico Signed Language Interpreting Practices Act shall abide by the NAD-RID code of professional conduct.

[16.28.5.2 NMAC - N, 07/21/09]

16.28.5.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17.

[16.28.5.3 NMAC - N, 07/21/09]

16.28.5.4 DURATION: Permanent

[16.28.5.4 NMAC - N, 07/21/09]

16.28.5.5 EFFECTIVE DATE: July 21, 2009, unless a later date is cited at the end of this section.

[16.28.5.5 NMAC - N, 07/21/09]

16.28.5.6 OBJECTIVE: The objective of Part 5 is to outline standards in order to preserve integrity and ethical principles of professionals serving the public in the signed language interpreting practices field.

[16.28.5.6 NMAC - N, 07/21/09]

16.28.5.7 DEFINITIONS:

[Reserved]
[Refer to 16.28.1.7 NMAC]

16.28.5.8 STANDARDS OF PRACTICE:

A. NON-DISCRIMINATION: The licensee shall provide interpreting services with objectivity and with respect for the unique needs and values of

an individual; the licensee shall avoid discrimination on the basis of factors that are irrelevant to the provision of interpreting services, including, but not limited to race, creed, sex, age or disability.

B. CREDENTIALS: The licensee shall accurately represent his professional qualifications and credentials;

C. COMPLIANCE WITH LAW: The licensee shall comply with all laws and regulations concerning the profession.

D. PROFESSIONAL CONDUCT:

(1) Interpreters adhere to standards of confidential communication.

(2) Interpreters possess the professional skills and knowledge required for the specific interpreting situation.

(3) Interpreters conduct themselves in a manner appropriate to the specific interpreting situation.

(4) Interpreters demonstrate respect for consumers.

(5) Interpreters demonstrate respect for colleagues, interns, and students of the profession.

(6) Interpreters maintain ethical business practices.

(7) Interpreters engage in professional development.

[16.28.5.8 NMAC - N, 07/21/09]

HISTORY OF 16.28.5 NMAC: [RESERVED]

NEW MEXICO SIGNED LANGUAGE INTERPRETING PRACTICES BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 28 SIGNED LAN- GUAGE INTERPRETERS PART 6 FEES

16.28.6.1 ISSUING AGENCY: Regulation and Licensing Department, Signed Language Interpreting Practices Board.

[16.28.6.1 NMAC - N, 07/21/09]

16.28.6.2 SCOPE: Any person licensed to practice interpreting.

[16.28.6.2 NMAC - N, 07/21/09]

16.28.6.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17.

[16.28.6.3 NMAC - N, 07/21/09]

16.28.6.4 DURATION: Permanent

[16.28.6.4 NMAC - N, 07/21/09]

16.28.6.5 EFFECTIVE DATE: July 21, 2009, unless a later date is cited at the end of this section.

[16.28.6.5 NMAC - N, 07/21/09]

16.28.6.6 OBJECTIVE: The objective of Part 6 is to establish fees for applications, renewal and late fee.

[16.28.6.6 NMAC - N, 07/21/09]

16.28.6.7 DEFINITIONS: [Reserved]

[Refer to 16.28.1.7 NMAC]

16.28.6.8 INITIAL APPLICATION FEES: A non-refundable application fee is due at the time of each initial application, as outlined below.

- A. A fee of \$65.00 is required for a community signed language interpreter license.
- B. A fee of \$65.00 is required for an educational signed language interpreter license.
- C. A fee of \$40.00 is required for a provisional signed language interpreter license.
- D. The board shall pro-rate initial fees for license applications submitted after April 1 as follows:

(1) community or educational licenses: initial fee shall be \$53.00; the license shall be valid until September 30 of the year following the issuance of the initial license;

(2) provisional licenses: initial fee shall be \$28.00; the license shall be valid until September 30 of the year of the issuance of the initial license.

[16.28.6.8 NMAC - N, 07/21/09]

16.28.6.9 LICENSE RENEWAL FEES:

- A. for community signed language interpreter licensure a nonrefundable biennial licensure fee of \$50.00;
- B. for educational signed language interpreter licensure a nonrefundable biennial license renewal fee of \$50.00;
- C. for provisional signed language interpreter licensure a nonrefundable annual provisional licensure fee of \$25.00, limited to four years that the licensee may renew.

[16.28.6.9 NMAC - N, 07/21/09]

16.28.6.10 OTHER FEES: Late license renewal: \$20.00.

[16.28.6.10 NMAC - N, 07/21/09]

HISTORY OF 16.28.6 NMAC: [RESERVED]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Explanatory paragraph: This is an emergency amendment to the Petition for Lump Sum Payment form attached to 11.4.4 NMAC, effective July 1, 2009. The WCA has amended its Petition for Lump Sum Settlement form to accommodate lump sum settlements authorized by the amendment to NMSA 1978, Section 52-1-12 and to assure that all the information necessary for the Workers' Compensation Judge to review the Petition is incorporated. No other forms are being amended at this time.

~~[STATE OF NEW MEXICO~~

~~WORKERS' COMPENSATION ADMINISTRATION~~

_____, WCA No.: _____
 Worker,
 * _____, and

 Employer/Insurer.

PETITION FOR LUMP SUM PAYMENT

PRE 1991 INJURY

1. The lump sum being requested is by agreement: Yes No

POST 1991 INJURY

- 2. A lump sum after a return to work for six months, while earning at least 80% of the pre-injury wage.
- A partial lump sum for payment of debts accumulated during the course of the disability.
- Request to consolidate payment into quarterly payments.

3. Type of injury: Occupational Injury Occupational Disease

4. Worker's Full Name: _____

Mailing Address: _____

City/State/Zip: _____

Telephone No.: _____

5. Worker's date of birth: ___/___/___ Age: ___ Sex: ___ M ___ F

6. Worker's Social Security Number: _____

7. Full Name of Employer: _____
 Employer's Address: _____
 City/State/Zip: _____
 Telephone No.: _____

8. Insurance Carrier: _____
 Address: _____
 City/State/Zip: _____
 Telephone No.: _____

9. Date of Accident: _____

a. City and County of accident: _____

b. Worker's job at time of accident: _____

c. Average weekly wage: _____

d. Weekly compensation rate: _____

e. How did the accident occur: _____

f. Type of injury/diagnosis: _____

g. Part(s) of the body injured: _____

h. Name and address of treating Doctor: _____

i. First date Worker was unable to perform job duties: _____

j. Date of maximum medical improvement: _____

k. Impairment rating: _____ Date assessed: _____
 Doctor's Name: _____

l. Has Worker been released to work by a Doctor? ___ Yes ___ No
 If yes, please indicate the date Worker was released to work: _____

m. Has Worker returned to work since the accident? ___ Yes ___ No
 If yes, please indicate the date Worker returned to work: _____

n. Name and address of current Employer: _____

o. Highest level of school completed by Worker: _____

RETURN TO WORK

10. a. The Worker returned to work on _____, 20____.
 The Worker returned to _____ the same job; _____ modified job duties; or _____ other job duties.

b. Worker's income _____ is; _____ is not at least 80% of the pre-injury wage.

ACCUMULATED DEBTS OF WORKER

11. _____ Debts have accumulated during the Workers' disability. Attach documentation indicating the date debt was incurred, name, address and phone number of the creditor, payment amount currently due and total balance.

12. A request is made for approval of a lump sum settlement as follows:

a. A lump sum payment of weekly compensation benefits in the amount of: _____.

b. The lump sum payment of weekly compensation benefits is a lump sum of: _____ all remaining weekly payments; or _____ a portion of remaining weekly payments. If a partial lump sum is approved, as of the ___ day of ___, 20___, the Worker will have _____ of weekly compensation benefits remaining. [number of weeks]

c. Future medical benefits will remain _____ open; _____ closed. If closed, the Worker is receiving \$ _____ in lieu of future medical benefits.

d. The payment requested _____ does; _____ does not include a lump sum for a mental impairment.

e. The payment request _____ does; _____ does not include a lump sum for the payment of vocational rehabilitation benefits.

f. The Worker is seeking an award of attorney fees in the amount of \$ _____, including gross receipts tax.

13. Is an interpreter needed for the hearings on this petition? ___ Yes ___ No.
 If yes, what language? _____ If yes, Employer must furnish.
 If you have questions, call 1 800 255 7965, Adjudication Bureau.

VERIFICATION OF WORKER

I, _____, verify I have read this petition for lump sum settlement
(Worker's Name)

approval and verified I understand the terms and conditions of the lump sum settlement agreement. I understand approval of this agreement will affect my future entitlement to workers' compensation benefits.

Worker's Signature	Date
Attorney for Worker (Print)	Signature
Attorney for Worker's Address	Date
Attorney/Representative for Employer (Print)	Signature
Attorney/Representative for Employer's Address	Date
Telephone & Fax Number	Telephone & Fax Number

STATE OF NEW MEXICO
 WORKERS' COMPENSATION ADMINISTRATION

_____, WCA No.: _____
 Worker,
 v.
 _____, and
 _____,
 Employer/Insurer.

PETITION FOR LUMP SUM PAYMENT

A. GENERAL INFORMATION

1. The lump sum being requested is by agreement and undisputed: Yes No
2. Lump sum after return to work for 6 months, earning at least 80% of the pre-injury wage pursuant to Section 52-5-12(B)
 Partial lump sum for payment of debts accumulated during the course of the disability pursuant to Section 52-5-12 (C)
 Request to consolidate weekly payments into quarterly payments.
 Request to approve lump sum pursuant to Section 52-5-12 (D) (must be filed by joint petition and agreed by the parties and uncontested)
3. Type of injury: Occupational Injury Occupational Disease
4. Worker's Full Name: _____
 Mailing Address: _____
 City/State/Zip: _____
 Telephone No.: () _____
5. Worker's date of birth: / / Age: Sex: M F
6. Worker's Social Security Number: - -
7. Full Name of Employer: _____
 Employer's Address: _____
 City/State/Zip: _____
 Telephone No.: () _____
8. Insurance Carrier: _____
 Address: _____
 City/State/Zip: _____
 Telephone No.: () _____
9. Date of Accident: _____
 - a. City and County of accident: _____
 - b. Worker's job at time of accident: _____
 - c. Average weekly wage: _____
 - d. Weekly compensation rate: _____
 - e. How did the accident occur: _____
 - f. Nature of the injury: _____
 - g. Part(s) of the body injured: _____
 - h. Name and address of treating Doctor: _____
 - i. First date Worker was unable to perform job duties: _____
 - j. Date of maximum medical improvement: _____
 - k. Impairment rating: _____ Date assessed: _____
 Doctor's Name: _____
 - l. Has Worker been released to work by a Doctor? Yes No
 If yes, please indicate the date Worker was released to work: _____
 - m. Has Worker returned to work since the accident? Yes No
 If yes, please indicate the date Worker returned to work: _____
 - n. Name and address of current Employer: _____
 - o. Highest level of school completed by Worker: _____

B. RETURN TO WORK LUMP SUM: Section 52-5-12 (B)

10. Return to work lump sum: _____

- a. The Worker returned to work on _____, 20____, and during the last six months Worker has been earning an average weekly wage of _____. (Attach relevant wage records)
- b. The Worker returned to _____ the same job; _____ modified job duties; or _____ other job duties.
- c. Worker's income _____ is; _____ is not at least 80% of the pre-injury average weekly wage.
- d. Worker has been advised of his right to other types of lump sum? ____ Yes ____ No.

C. ACCUMULATED DEBTS OF WORKER: Section 52-5-12(C)

11. Debt based partial lump sum advance: Debts have accumulated during the Workers' disability. (Attach documentation indicating the date debt incurred during period of disability, name, address and phone number of the creditor, payment amount currently due and total balance).

D. UNDISPUTED TOTAL/PARTIAL LUMP SUM: Section 52-5-12(D)

- 12. Undisputed total/partial lump sum settlement.
- a. The proposed settlement is () Total () Partial.
- b. The proposed settlement is by agreement and is undisputed by the parties? ____ Yes ____ No
- c. Describe nature of the proposed settlement, why there is a need to settle the proceeding per the agreed terms, and how the settlement provides _____ substantial _____ justice:_____

E. REQUEST FOR RELIEF:

- 13. A request is made for approval of a lump-sum settlement as follows (applicable to §52-5-12 (B), (C) & (D)):
- a. A lump sum payment of weekly compensation benefits in the amount of:_____.
- b. The lump sum payment of weekly compensation benefits is a lump sum of () all remaining weekly payments; or () a portion of remaining weekly payments. If a partial lump sum is approved, as of the _____ day of _____, 20____, the Worker will have _____ of weekly compensation benefits remaining. [# of weeks]
- c. Future medical benefits will remain () open indefinitely or for a term of years; () closed. If closed, Worker shall receive \$ _____ in lieu of future medical benefits. If future medical benefits will remain open for a term of years, the term will be _____ years from date of final approval of the settlement. Copies of records shall be attached to petition/application relevant to the need for future medical care, impairment, and other issues, as may be appropriate.
- d. The payment request () does; () does not include a lump sum for a mental impairment. Copies of medical records should be attached to petition relevant to mental condition, need for future medical care, as appropriate.
- e. The parties are seeking an award or approval of attorney fees in the amount of \$ _____, including gross receipts tax.
- f. Other: _____

IF THE VERIFICATION IS NOT SIGNED BY THE WORKER, THE PETITION WILL NOT BE ACCEPTED FOR FILING BY THE WCA CLERK OF THE COURT.

VERIFICATION OF THE WORKER

COUNTY OF _____)
 _____ SS.)
 STATE OF NEW MEXICO)

I, _____, Worker, verify I have read this petition for lump-sum settlement approval and I swear and affirm that I understand the terms and conditions of the lump-sum settlement agreement. I understand approval of this agreement will affect my future entitlement to workers' compensation benefits.

 Date Worker's signature

SUBSCRIBED AND SWORN to before me by Worker, _____, on this _____ day of _____, 20_____.

Notary Public
 My commission expires:

 Signature of Worker's Attorney (if any)

Name

Address

City, State, Zip

Telephone & Fax Number

APPROVAL OF THE EMPLOYER/INSURER/OTHER (UNDISPUTED PETITIONS)

I, _____, Employer/Insurer/Attorney, state that I have read this petition for lump-sum settlement approval, that I sign this Joint Petition with full authority to do so, and I confirm that I understand the terms and conditions of the lump-sum settlement agreement. I understand approval of this agreement will affect my company's/client's obligation to pay under this settlement, and its future obligation to pay workers' compensation.

Date

Signature

Name

Address

City, State, Zip

Telephone & Fax Number

[5/26/87, 6/20/89, 10/28/93, 3/3/94, 6/1/96, 9/25/96; 10/1/98; 11.4.4 NMAC, Appendix A - Rn, 11 NMAC 4.4 Appendix A, 06/13/03; A, 08/31/05; A, 12/31/07; A/E, 07/1/09]

End of Adopted Rules Section

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Other Material Related to Administrative Law

**NEW MEXICO BOARD OF
EXAMINERS FOR
ARCHITECTS****New Mexico Board of Examiners for
Architects**

PO Box 509
Santa Fe, NM
505-982-2869

Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, August 7, 2009. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2009

Volume XX	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
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
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 3	August 14
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
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

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