

**NEW  
MEXICO  
REGISTER**

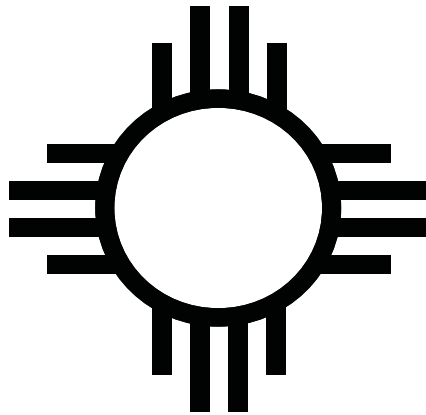


Volume XX  
Issue Number 15  
August 14, 2009



# **New Mexico Register**

**Volume XX, Issue Number 15**  
**August 14, 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 15

August 14, 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.

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

#### LEGAL NOTICE

#### Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Acupuncture and Oriental Medicine will hold a Rule Hearing on Wednesday, September 16, 2009. Following the Rule Hearing the New Mexico Board of Acupuncture and Oriental Medicine will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Acupuncture and Oriental Medicine Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Department, Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.2.1 NMAC -General Provisions; 16.2.2 NMAC - Scope of Practice; 16.2.3 NMAC - Application for Licensure; 16.2.4 NMAC - Examinations; 16.2.6 - Reciprocal Licensing; 16.2.8 NMAC - License Renewal; 16.2.9 NMAC - Continuing Education; 16.2.10 NMAC - Fees; 16.2.11 NMAC - Licensee Business Offices and Administrative Requirements; 16.2.12 NMAC - Grounds for Denial; 16.2.17 NMAC - Licensure by Endorsement; 16.2.18 NMAC (NEW) - Expanded Practice Educational Courses; 16.2.19 NMAC (NEW) - Expanded Practice Certifications; 16.2.20 NMAC (NEW) - Expanded Practice Formulary

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4630 after August 15, 2009. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than September 2, 2009. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4630 at least two weeks prior to the meeting or as soon as possible.

Martha L. Gallegos, Administrator  
PO Box 25101- Santa Fe, New Mexico  
87504

### NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

#### NOTICE OF BOARD OF FINANCE RULE

The State Board of Finance is in the process of revising one of its rules: Bond Project Disbursements. Copies of the existing rule and proposed changes are available in room 181, Bataan Memorial building, Santa Fe, NM 87501 and on the Board of Finance website, <http://board.nmdfa.state.nm.us>. The Board will consider adopting the proposed rule at its September 15, 2009 meeting, which takes place at 9:30 in the Governor's Cabinet Room, State Capitol building. Please mail or deliver written comments on the proposed changes to Sharon Romero, 181 Bataan Memorial building, Santa Fe, NM 87501 by September 14, 2009.

### NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

#### NOTICE OF BOARD OF FINANCE RULE

The State Board of Finance is in the process of revising one of its rules: Depository Bank Requirements, Collateral Level Requirements, and Custodial Bank Requirements. Copies of the existing rule and proposed changes are available in room 181, Bataan Memorial building, Santa Fe, NM 87501 and on the Board of Finance website, <http://board.nmdfa.state.nm.us>. The Board will consider adopting the proposed rule at its September 15, 2009 meeting, which takes place at 9:30 in the Governor's Cabinet Room, State Capitol building. Please mail or deliver written comments on the proposed changes to Olivia Padilla-Jackson, 181 Bataan Memorial building, Santa Fe, NM 87501 by September

14, 2009.

### NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION LOCAL GOVERNMENT DIVISION

#### Notice of Hearing of Amendments to Rule 2.110.2 NMAC Small Cities Community Development Block Grants

New Mexico Department of  
Finance and Administration

The Department of Finance and Administration ("DFA") hereby gives notice that DFA will conduct a public hearing in Room 321, State Capitol Building, 415 Old Santa Fe Trail, Santa Fe, New Mexico, 87503, on September 15, 2009 at 10:00 a.m. concerning amendments to 2.110.2.7 NMAC, 2.110.2.10 NMAC, 2.110.2.11 NMAC, 2.110.2.16 NMAC, 2.110.2.17 NMAC, 2.110.2.19 NMAC, 2.110.2.20 NMAC, 2.110.2.26 NMAC, Name of Exhibit, NMAC Small Cities Development Block Grants (hereinafter referred to as the "CDBG Rule").

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on September 14, 2009, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, and Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of the text of the proposed CDBG Rule are available from Ms. Dolores Gonzales, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4972 or from the DFA internet website <http://www.state.nm.us/clients/dfa/index.html>.

These are amendments to 2.110.2.7, 2.110.2.10, 2.110.2.11, 2.110.2.16, 2.110.2.17, 2.110.2.19, 2.110.2.20, 2.110.2.26 NMAC, effective XX-XX-XXXX.

#### **2.110.2.7 DEFINITIONS:**

**A.** "Asset management" is a systematic process of maintaining, upgrading, and operating physical assets cost-effectively. It combines engineering principles with sound business practices and economic theory, and it provides tools to facilitate a more organized, logical approach to decision making. It is a planning process that ensures the most value from each asset with a plan to rehabilitate and replace

them when necessary. An accurate and up-to-date asset management plan will help communities comply with the Government Accounting Standards Board's Statement #34 (GASB 34), an accounting standard for publicly owned systems.

**B.** "Council" means the New Mexico community development council.

**C.** "Department" means the department of finance and administration.

**D.** "Division" means the local government division.

**E.** "Low and moderate income person" is a member of a household whose income would qualify as "very low income" under the Section 8 housing assistance payments program. Section 8 limits are based on 50 percent of the county median income. Similarly, CDBG moderate income is based on Section 8 "lower income" limits, which are generally tied to 80 percent of the county median income.

**F.** "CDBG" means the small cities community development block grant program.

**G.** "Rural" means a county with a population of less than 25,000 and an incorporated municipality with a population of less than 3,000.

**H.** "Program income" means amounts earned by a unit of general local government or its sub recipient that were generated from the use of CDBG funds.

**I.** "Slum area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area in which there is a predominance of buildings or other improvements which are found by the local governing body by reason of 1) dilapidation, 2) deterioration, 3) age, or 4) obsolescence, 5) inadequate provision for ventilation, light, air, sanitation or open spaces, 6) overcrowding, 7) the existence of conditions which endanger life or property, or 8) any combination of such factors, to contribute to either ill health, the transmission of disease, infant mortality, juvenile delinquency or crime, and to be detrimental to the public health, safety, morals or welfare.

**J.** "Blighted area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area, other than a slum area, which is found by the local governing body by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivisions or obsolete platting, or

the existence of conditions which endanger life or property, or any combination of such factors to substantially impair or arrest the sound growth of the municipality, retard the provision of housing accommodations or constitute an economic or social liability and is a menace to the public health, safety, morals or welfare in its present conditions and use.]

**K.** "Slum area" pursuant to the Metropolitan Redevelopment Act, Section 3-60A-4 NMSA 1978 (as amended), means: "an area within the area of operation in which numerous buildings, improvements and structures, whether residential or nonresidential, which, by reason of its dilapidation, deterioration, age, obsolescence or inadequate provision for ventilation, light, air, sanitation or open spaces, high density of population, overcrowding or the existence of conditions that endanger life or property by fire or other causes, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime and is detrimental to the public health, safety, morals or welfare."

**L.** "Blighted area" pursuant to the Metropolitan Redevelopment Act, Section 30-A-4 NMSA 1978 (as amended), means: "an area within the area of operation other than a slum area that, because of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or lack of adequate housing facilities in the area or obsolete or impractical planning and platting or an area where a significant number of commercial or mercantile businesses have closed or significantly reduced their operations due to the economic losses or loss of profit due to operating in the area, low levels of commercial or industrial activity or redevelopment or any combination of such factors, substantially impairs or arrests the sound growth and economic health and well-being of a municipality or locale within a municipality or an area that retards the provisions of housing accommodations or constitutes an economic or social burden and is a menace to the public health, safety, morals or welfare in its present condition and use."

**M.** "Units of local government": Any incorporated municipality or county.

**N.** "Councils of governments": A regional association of municipalities, counties and special districts formed to provide planning and other

services to its member organization.

**O.** "Water association": Political subdivisions of the state organized under Section 3-29-1 through Section 3-29-20, NMSA 1978, the "Sanitary Projects Act" or Section 73-21-1 through Section 73-21-55, NMSA 1978, the "Water and Sanitation District Act".

**P.** Land Grant/Merced (political subdivision of the state organized under Section 49-1-1 through 49-1-23, NMSA 1978, Land Grants General Provisions.

**Q.** "Set-aside": means a portion of all CDBG funding received by the CDBG program that is annually allocated by the CDBG program and the council to be used only for certain set-aside categories that are chosen by the CDBG program and the council.

[2.110.2.7 NMAC - Rp 2 NMAC 110.2.7, 08-30-01, 12-14-06; A, 09-28-07; A, xx-xx-09]

## 2.110.2.10 E L I G I B L E APPLICANTS

**A.** All counties, incorporated municipalities, and New Mexico mortgage finance authority (MFA) are eligible to apply except: the city of Albuquerque, the city of Farmington, the city of Las Cruces, the city of Santa Fe and the city of Rio Rancho who cannot apply since they receive funding directly from the department of housing and urban development (Title I, Section 106) as entitlement cities.

**B.** Other entities such as water associations, sanitation districts, land grants, public nonprofit groups, council of governments, mutual domestic water consumer associates, etc., cannot apply directly for assistance, other than planning grants.

**C.** However, these entities may be involved in the execution of an approved CDBG project if the eligible applicant chooses to operate the program through such an entity under a contractual agreement.

**D.** Indian pueblos and tribes receive funding directly from the department of housing and urban development (Title I, Section 107). Native American tribes are encouraged to submit applications to the Albuquerque HUD Office of Native American Programs, 201 3<sup>rd</sup> St., N.W., Suite 1830, Albuquerque, New Mexico 87102-3368, (505) 346-6923.

[2.110.2.10 NMAC - Rp 2 NMAC 110.2.10, 08-30-01; A, 08-13-04 A, 09-28-07; A, 09-30-08, A, xx-xx-09]

## 2.110.2.11 E L I G I B L E ACTIVITIES/CATEGORIES

**A.** Applicants may apply for funding assistance under the following



**categories:**

- (1) community infrastructure;
- (2) housing;
- (3) public facility capital outlay;
- (4) economic development;
- (5) emergency;
- (6) colonias;
- (7) planning.

**B. Eligible activities under each of the categories are listed below.****C. Community infrastructure:** Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition
- (2) construction or rehabilitation of the following:

- (a) water systems;
- (b) sewer systems;
- (c) municipal utilities;
- (d) roads;
- (e) streets;
- (f) highways;
- (g) curbs;
- (h) gutters;
- (i) sidewalks;
- (j) storm sewers;
- (k) street lighting;
- (l) traffic control devices;
- (m) parking facilities;
- (n) solid waste disposal facilities.

**D. Housing:** Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition;
- (2) rehabilitation;
- (3) clearance;
- (4) demolition and removal of privately-owned or acquired property for use or resale in the provision of assisted housing;
- (5) provision of public facilities to increase housing opportunities;
- (6) financing the repair, rehabilitation and in some cases reconstruction of privately-owned residential or other properties through either loan or grant programs;
- (7) certain types of housing modernization;
- (8) temporary relocation assistance;
- (9) code enforcement;
- (10) historic preservation activities;
- (11) not to exceed fifty thousand dollars (\$50,000) in CDBG funds per home can be used on home rehabilitation/repair activities.

**E. Public facility capital outlay:** Eligible activities may include, but are not limited to, such items as:

- (1) real property acquisition;
- (2) construction or improvement of community centers;
- (3) senior citizen centers;
- (4) nonresidential centers for the handicapped such as sheltered workshops;

(5) other community facilities designed to provide health, social, recreational or similar community services for residents.

**F. Economic development:** The economic development category is established to assist communities in the promotion of economic development and is described in detail in Section 26.

**G. Emergency:** The emergency fund provides funding for emergency projects which address life threatening situations resulting from disasters or imminent threats to health and safety.

(1) Applications under this category will be accepted throughout the year.

(2) Application shall include written verification and adequate documentation by a state agency and with the applicant's assessment of the life threatening situation and shall be submitted no later than 18 months from the certification by the applicant and documentation of the need for the emergency project.

(3) An applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.

**H. Planning:** In addition to municipalities and counties, water associations, including water and sanitation districts, and land grants as defined in Section 2.110.2.7, Subsection M; are eligible to apply directly for planning grants only. Planning grant assistance from the CDBG program, which is available only to a municipality or county, must be used for a comprehensive plan if the applicant does not have a current comprehensive plan (not older than five years from the date of application). A comprehensive plan must be adopted by ordinance, and it must include as a minimum the following elements;

(1) elements:

(a) land use; including (i) an analysis and mapping of existing land patterns and an inventory of the amount, type and intensity of uses by land category, as well as an analysis of effects of various land use patterns on greenhouse gas emissions; (ii) an analysis of trends in the supply and demand of land by land use category, including a projection of the distribution, location and extent of future land uses by land use category over a twenty-year period; (iii) goals, objectives and policies that address maintaining a broad variety of land uses, including the range of uses existing when the plan is adopted or amended; and (iv) specific actions and incentives that the contracting agency may use to promote planned development, reduction in greenhouse gas emissions, or otherwise encourage certain

identified development patterns and the locations where such development patterns should be encouraged;

(b) housing; including (i) an analysis of existing housing supply and demand, analysis of greenhouse gas emissions from the housing sector, and forecasted housing needs; (ii) goals, objectives and policies for the improvement of housing quality, variety and affordability, for reduction of greenhouse gas emissions, and for provision of adequate sites for housing and housing opportunities for all segments of the community; and (iii) a description of the actions that will be taken to implement housing goals, objectives and policies; and (iv) must comply with the affordable housing act.

(c) transportation; including (i) description and assessment of the location, type, capacity and condition of existing transportation facilities, such as freeways, arterial and collector streets, mass transit or other modes of transportation as may be appropriate, and analysis of greenhouse gas emissions from the transportation sector; (ii) goals, objectives and policies for encouraging safe, convenient, efficient and economical transportation, including mass transit and facilities for bicyclists and pedestrians, for reduction of greenhouse gas emissions, and a description of proposed levels of service and funding mechanisms; and (iii) a description and assessment of proposed location, type and capacity of proposed transportation facilities designed to implement transportation goals, objectives and policies and a description of funding mechanisms that will be used to fund proposed transportation improvements;

(d) infrastructure; including (i) a description and assessment of the location, type, capacity and condition of existing infrastructure, including emergency services, sewage, drainage, local utilities and other types of facilities; (ii) goals, objectives and policies for promoting the efficient provision of infrastructure, including a description of proposed levels of service; and (iii) a description and assessment of proposed facility expansion and improvements designed to support planned uses and implement infrastructure goals, objectives and policies;

(e) economic development; including (i) a description of existing job composition and trends by industry and location characteristics, such as access to transportation or proximity to natural or human resources, that influence the economic development potential of the contracting agency, and analysis of greenhouse gas emissions from the commercial and industrial sectors; (ii) goals, objectives and policies for promoting economic development, and for reduction of greenhouse gas emissions; and (iii) a description of the actions that the

contracting agency will take to implement economic development goals, objectives and policies;

(f) water; including (i) description and assessment of the sources of water supply; (ii) the demand for water by residential, commercial, institutional, industrial and recreational sectors; (iii) assessment of the water unaccounted for water losses due to leaks, theft or other reasons; (iv) goals, objectives and policies for promoting the efficient use of water and for managing periods of drought; and (v) an analysis of the demand for water that will result from future growth projected in the plan, when added to existing uses, and how the demand for water that will result from future projected growth will be served by current water supplies, water conservation, water reuse or a plan to obtain additional water supplies or increase water use efficiencies;

(g) hazards; , including (i) an analysis of the risks of hazards such as wildfire, floods, extreme weather conditions, accidents, and terrorism; (ii) goals, objectives and policies for hazard mitigation; and (iii) a description of the actions that will be taken to mitigate hazards;

(h) implementation; a compilation of the plan's goals, objectives, policies, standards or guidelines, along with specific actions to be completed in a stated sequence, which start with adoption of the comprehensive plan by ordinance;

(2) development of additional elements of a comprehensive plan may include, but are not limited to:

(a) drainage;

(b) parks, recreation and open space;

(c) tourism;

(d) growth management;

(e) fiscal impact analysis;

(f) intergovernmental cooperation;

(g) social services;

(h) historic preservation;

(i) asset management plan;

(3) if the entity has a current comprehensive plan (not older than five years from the date of application), it may apply for funding assistance for any of the following:

(a) data gathering analysis and special studies;

(b) base mapping, aerial photography, geographic information systems, or global positioning satellite studies;

(c) improvement of infrastructure capital improvement plans and individual project plans;

(d) development of codes and ordinances, that further refine the implementation of the comprehensive plan;

(e) climate change mitigation and adaptation plan;

(f) preliminary engineering report

(according to USDA/RUS guidelines);

(g) related citizen participation or strategic planning process; or

(h) other functional or comprehensive planning activities;

(i) asset management plan;

(j) regionalization of infrastructure and service delivery.

(4) applicants may apply for funding assistance throughout the year as long as funds are available.

~~[(5) preliminary engineering reports must follow USDA/RUS guidelines.]~~

#### I. Colonias:

(1) The colonias category is established in the amount of 10% of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three conditions which qualify communities for designation to be carried out in areas along the U.S. - Mexican border.

(2) Eligible applicants for the colonias set aside are municipalities and counties located within 150 miles of the U.S. - Mexico border.

(3) Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:

(a) lack of potable water supply; or

(b) lack of adequate sewage systems; or

(c) lack of decent, safe and sanitary housing; and

(d) must have been in existence as a colonia prior to November, 1990.

(4) Appropriate documentation to substantiate these conditions must be provided along with the application for funding.

[2.110.2.11 NMAC - Rp 2 NMAC 110.2.11, 08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, 09-28-07; A, xx-xx-09]

**2.110.2.16 P R O G R A M REQUIREMENTS Section B:** Each CDBG application must meet at least one of the three national objectives, low and moderate income benefit, prevention or elimination of slums or blight or urgent need, which are herein described.

**A.** Low and moderate income benefit - An activity identified as principally benefiting (51%) persons of low and moderate income will be considered eligible only if it meets one of the criteria below:

(1) the activity must be carried out in a neighborhood or area consisting predominantly of persons of low and moderate income and provide services to such persons;

(2) the activity must involve facilities designed for use by a specific group of people or clientele predominantly of low

and moderate income; or

(3) the activity must add or improve permanent residential structures which will be occupied by low and moderate income households upon completion; or

(4) the activity must involve creating or retaining jobs, the majority of which must be for persons of low and moderate income.

(5) the above can be substantiated with data from:

(a) the most recent low and moderate income data from the U.S. census (see attachment [E] A).

(b) a special survey conducted using HUD approved methodology;

(c) income eligibility requirements consistent with HUD approved income limits.

**B.** Prevention or elimination of slums or blight - An activity identified as aiding in the prevention or elimination of a slum or blighted area must meet all of the following five criteria.

(1) The area must be designated by the applicant and must meet a definition of a slum, blighted, deteriorated or deteriorating area under state or local law (see definitions section of [regulations] 2.110.2 NMAC).

~~[(a) For the purpose of meeting this criterion, it is not necessary to follow the formal procedures under state law for designating a slum or blighted area. However, the definition of slum, blighted, etc. must be incorporated in state or local law.~~

~~\_\_\_\_\_ (b) There must be a substantial number of deteriorated or deteriorating buildings or public improvements throughout the area.~~

~~(2) As a "safe harbor," HUD will consider this criterion to have been met if either of the following conditions prevail in the area:~~

~~\_\_\_\_\_ (a) at least one quarter of all the buildings in the area must be in a state of deterioration, since state law does not specifically indicate the percentage of deteriorated or deteriorating buildings required to qualify the area;~~

~~\_\_\_\_\_ (b) or, public improvements throughout the area are in a general state of deterioration; and~~

~~\_\_\_\_\_ (c) it is insufficient for only one type of public improvement, such as the sewer system, to be in a state of deterioration; rather, the public improvements taken as a whole must clearly exhibit signs of deterioration.]~~

(2) The area must exhibit at least one of the following physical signs of blight or decay.

\_\_\_\_\_ (a) The area shall possess a substantial number of deteriorated or deteriorating buildings throughout; meaning at least one quarter of all the buildings in the area must be in a state of deterioration.

(b) The area shall possess public improvements throughout the area which must be in a general state of deterioration. For example, it would be insufficient for only one type of public improvement, such as the sewer system, to be in a state of deterioration; rather, the public improvements taken as a whole must clearly exhibit signs of deterioration.

(3) Documentation must be maintained by the applicant on the boundaries of the area and the condition which qualified ~~[it as a slum]~~ the area at the time of its designation.

(4) The activity must address one or more of the conditions which contributed to the deterioration of the area.

(5) To comply with this objective on a spot basis outside of a slum or blighted area the proposed activity must be designated to eliminate, specific conditions of blight or physical decay.

~~[(6)]~~ The proposed activity must be limited to:

- ~~[(a)]~~ acquisition;
- ~~[(b)]~~ clearance;
- ~~[(c)]~~ relocation;
- ~~[(d)]~~ historic preservation;
- ~~[(e)]~~ and rehabilitation of buildings;
- ~~[(f)]~~ but, only to the extent necessary to eliminate specific conditions detrimental to public health and safety]

(a) acquisition and clearance of blighted properties;

(b) renovation and reuse of abandoned, historic properties;

(c) commercial revitalization through façade improvements;

(d) removal of environmental contamination on property to enable it to be redeveloped.

C. Urgent need - An activity identified as meeting community development needs having a particular urgency will be considered only if the applicant certifies the following:

(1) that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health and welfare of the community;

(2) that the condition(s) to be alleviated is of recent origin, i.e., it developed or became critical within 18 months preceding the certification by the applicant;

(3) that the applicant is unable to finance the activity on its own and other sources of funding are not available;

(4) in addition, verification of the urgency of the need must be provided with written documentation by the appropriate state agency.

[2.110.2.16 NMAC - Rp 2 NMAC 110.2.16, 08-30-01; A, xx-xx-09]

**2.110.2.17 APPLICATION REQUIREMENTS**

A. Number of applications - All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, housing, public facility capital outlay, or colonias categories.

(1) Planning applicants may submit at anytime an additional application for funding and shall not exceed fifty thousand dollars (\$50,000).

(2) Applicants in the economic development [-] or emergency may be submitted at any time and shall not exceed five hundred thousand dollars (\$500,000), subject to funding availability.

(3) Counties may submit multiple applications for planning grants for water associations.

(4) Planning, economic development and emergency applications may be submitted, at anytime, even if the applicant has not completed other CDBG projects.

B. Single purpose application -An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area may not be the entire municipality or county.

C. Joint applications - Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.

(1) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

(2) However, other parties to the joint application may submit another application.

(3) Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.

(4) It should be noted that satisfying the required criteria, which is available from the division upon request, may take a significant period of time.

D. A p p l i c a t i o n requirements for the following minimum requirements apply to all applications for CDBG funding:

(1) applications must involve a project that will be fully functional on a stand-alone basis once awarded CDBG and other committed funds have been expended and;

(2) projects shall be completed within twenty-four months of an award of funding;

(3) applications may not exceed \$500,000;

(4) if the applicant, after conducting the required public hearing, determines that the previous year's CDBG

unfunded application is still a priority, the applicant must submit the original along with a current year's resolution, updated project budget and schedule and any other information required by division staff.

E. Threshold requirements - To encourage timely completion of projects and to maximize participation the following threshold requirements shall be met prior to the application deadline.

(1) All projects for the eligible activities in the categories listed in Subsections C, D, E, and I of 2.110.2.11 NMAC must be completed at the time of application. (certificate of occupancy or certification of operation must be in place).

(2) All audit and monitoring findings, for CDBG projects, must be resolved.

(3) The current fiscal operating budget for any local public body as defined in Section 6-6-1 NMSA 1978 (as amended) applying for CDBG funds must be approved.

(4) The local government division financial management bureau will verify that financial quarterly/ monthly reports are current before CDBG applications deadline.

~~[(5) The following set aside categories are exempt from threshold requirement: planning, economic development, and emergency.]~~

(5) The local government division, budget and finance bureau, shall report the applicant's most current audit filing with the state auditor office for all applicants that are counties and municipalities. They determine compliance with the budget certification rule, 2.2.3 NMAC. The CDC will take into consideration whether the counties or municipalities are in compliance with the budget certification rule.

(6) The following set aside categories are exempt from threshold requirements set forth in Subsection E of 2.110.2.17 NMAC: planning, economic development, and emergency categories.

F. Matching requirements - In order to assist the council in making funding resources go further and to ensure there is a local investment in applications submitted to the council for funding consideration, the following will be required.

(1) Rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(2) Non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(3) Consistent with 2.110.2 NMAC, all applications in the economic development category must provide at least one private dollar for each dollar of CDBG funds requested.

(4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.

(5) Applicants may request a waiver of the matching requirement from the council if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed 5% of the applicant's general fund budget;

(b) the required match must equal or exceed the non-earmarked balance of funds in the applicant's budget.

**G. Other funding commitments** - If other funding is necessary to make a proposed project feasible, funding commitments or commitments subject to CDBG approval, must be in place and letters of commitments from the funding agency must be submitted with the application.

**H. Water conservation and drought commitments** - In order to make the state's water supplies go further and to ensure proper levels of preparations are taken locally for periodic droughts, the following is encouraged.

(1) Applicants develop, adopt and submit to the state engineer a comprehensive water conservation ordinance.

(2) Applicants develop, adopt and submit to the state engineer a drought management plan.

(3) The ordinance and plan shall be accompanied by a program for its implementation.

(a) in developing a water conservation ordinance pursuant to this section: applicants shall adopt ordinances and codes to encourage water conservation measures; they shall identify and implement best management practices in their operations to improve conservation of the resources; and

(b) applicants shall consider and incorporate into its plan if appropriate, at least the following:

(i) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(ii) low-water-use landscaping and efficient irrigation;

(iii) water-efficient commercial and industrial water-use processes;

(iv) water reuse systems for both potable and non-potable water;

(v) distribution system leak repair;

(vi) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;

(vii) water rate structures establishing rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility and are designed to encourage water-use efficiency and reuse in a fiscally responsible manner and

(viii) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.

(c) the council shall encourage the applicant to submit a copy of its water conservation plan with applications for construction of any facility.

**I. Asset management** - In order to support the long term operation, maintenance, repair and replacement of system facilities, infrastructure, public facilities, or other eligible activities the following will be required.

~~(1) [In order to ensure water and wastewater infrastructure is managed within a strategic framework driven by program and service deliver needs, communities that implement a rate analysis based upon an asset management program will be credited in the application process for their achievement. The model for the asset management program is the EPA publication "Asset Management: A Handbook for Small Water Systems (EPA 816-R-03-0160 September 2003):] In order to ensure water and wastewater infrastructure is managed within a strategic framework driven by program and service delivery needs, communities that implement an asset management program and use that approach as the basis for their rate analysis will be credited in the application process for their achievement. The model for the asset management program is the international infrastructure asset management model, adopted by EPA. This approach includes five core components, which are as follows:~~

~~(a) current state of the assets: an asset inventory that includes the following at a minimum: asset name, asset location, asset condition, useful life, and an estimate of replacement value;~~

~~(b) level of service: a description of what the utility wishes to provide its customers;~~

~~(c) criticality: an evaluation of which assets are critical to the sustained operation of the utility;~~

~~(d) life cycle costing: at a minimum, a capital improvement plan that describes the replacement of assets and some consideration of operation and maintenance of the assets;~~

~~(e) financing plan: a description of the funding sources that will be used to pay for the capital and operational needs of the utility.~~

(2) For community infrastructure and public facilities, or other eligible

activities an asset management plan will be required to be submitted at the time of application [EPA 816-R-03-0160 September 2003]. The approach will follow the same five components described in Subparagraphs (a) - (e) of Paragraph (1) of Subsection I of 2.110.2.17 NMAC above.

[2.110.2.17 NMAC - Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, 09-28-07; A, 09-30-08; A, xx-xx-09]

## **2.110.2.19 APPLICATION REVIEW AND EVALUATION PROCESS**

**A.** Upon receipt of applications, division staff will review them for eligibility, completeness, feasibility, and compliance and to ensure that all other funding necessary to make the project functional is in place. Applications that are found to be incomplete, ineligible, or not feasible or do not have other funding necessary to make the project functional, will be returned to the applicant and will not be considered for funding.

**B.** Applications will be forwarded to appropriate state agencies for technical review and comment. Review agencies may include, but are not limited to, the environment department, department of transportation, department of health, state engineer's office, state agency on aging, economic development department, state fire marshal and governor's commission on disability.

**C.** Applicants will be allowed to make presentations to the council and division staff at an official council hearing. Testimony related to the application will be presented by an official or designee of the applying entity who may be assisted by technical staff.

**D.** Division staff will receive comments from state agencies regarding specific projects.

**E.** The council and division have developed the following rating criteria for evaluation of CDBG applications submitted for funding in the following categories: infrastructure, housing, public facility, capital outlay and colonias application categories. For infrastructure, housing, public facility, capital outlay and colonia application categories, the following nine (9) criteria are used to score the application. In addition, for colonias applications, the applicant needs to fulfill the four conditions in Subsection G of 2.110.2.19 NMAC.

(1) **Description and need** - (5 points) extent to which the project is needed. The more severe the need as documented in the application, the higher the score. It is only necessary to answer the questions on the application that pertain to the appropriate application category and do not answer

questions on the application that pertain to other categories.

**(2) Benefit to low and moderate and appropriateness** - (20 points) extent to which the CDBG application:

(a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender; or

(b) addresses the prevention or removal of slum or blighting conditions; or

(c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

**(3) Leveraging** - (15 points) extent to which federal, state, and local resources, in addition to the required match, are being used by the applicant for the proposed project. The greater the leveraging, in addition to the required match, the higher the score.

**(4) Citizen participation** - (10 points) extent to which the applicant:

(a) has provided opportunities for public participation in the identification of community development needs;

(b) pledges opportunities for active citizen participation during the project, where applicable; and

(c) pledges opportunities for active citizen participation in the implementation of the project, where applicable.

**(5) Planning** - (10 points) extent to which the applicant:

(a) (3) points: Applicant has adopted a local (ICIP), which has qualified for publication in the most recent local (ICIP) published prior to the CDBG application deadline.

(b) (3) points: The proposed project has qualified for publication in the most recent ICIP prior to the CDBG application deadline and applicant has selected CDBG as one of its possible funding sources.

(c) 1 point: Degree to which applicant's proposed project shows consistency with applicant's comprehensive plan.

(d) 1 point: Adopting a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use.

(e) 1 point: Adopting a water conservation ordinance, setting in place various methods for conserving potable water.

(f) 1 point: Implementing a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.

**(6) Feasibility/readiness** - (20 points) extent to which the project is technically and economically feasible and ready to be implemented. Examples of actions that can be taken prior to submission

of the application to receive maximum points are:

(a) necessary real property or easements acquired; (5)

(b) professional services contract executed; (5)

(c) completed plans, specifications, bid documents, or preliminary engineering reports; (5)

(d) complete the environmental review process (5).

**(7) Cost benefit** - (10 points) number of direct beneficiaries of the project compared to the amount of funds requested. The higher the number of beneficiaries compared to the amount of funds requested, the higher the score.

**(8) User fees and revenues** - (10 points) ~~What best demonstrates the rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility?~~

~~(a) Rates developed by asset management as presented by the New Mexico Tech, environmental finance center (EFC). (10 points)~~

~~(b) rates developed by a rate analysis, excluding asset management or allowance for replacement of reserve funds. (5 points)~~

~~(c) rates developed by other. (1 point)~~

(a) attendance at an asset management training within the last three years that includes the five core components set forth in Subsection I of 2.110.2.17 NMAC (1 point)

(b) development of an asset management plan that includes some, but not all, of the five core components (2 points)

(c) development of a complete asset management plan with all five core components (5 points)

(d) rates developed based on asset management, using the five core components (10 points)

(e) rates developed by a rate analysis, excluding asset management or allowance for replacement of reserve funds (2 points)

(f) rates developed by other. (1 point).

**(9) Non-funded applicants** - (10 points) - Applicants that were not funded in the prior year.

**F. Planning criteria category**

**(1) Consistency (25 points):** Document the degree to which the proposed planning project is consistent with the [applicants] applicant's current version of its comprehensive plan, its infrastructure capital improvement plan, and its planning region's consolidated plan, or its planning documents or studies.

**(2) Appropriateness (25 points):** Describe the impact the proposed project

will have on at least one of the three national objectives of the CDBG program, i.e.,

(a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender; or

(b) addresses the prevention or removal of slum or blighting conditions; or

(c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

**(3) Public involvement (25 points):** Describe how the planning process will involve citizens in the preliminary identification of community needs, in the development and active participation in the planning process, and in the implementation of the plan, including a minimum of one public hearing with proper notice in accordance with law.

**(4) Implementation strategy (25 points):** Describe the local commitment of resources to the planning process; commitment to adopt the plan, either by resolution, rule, policy or ordinance; and commitment to use the results of the planning process in the decision making process.

**G. Colonias criteria category** - When submitting a colonias category application, the applicant shall provide documentation to substantiate that a majority of the following conditions exist in the project area:

(1) lack of potable water; or

(2) lack of an adequate sewage system; or

(3) lack of safe, sanitary housing; and

(4) source documentation must also be provided of colonias designation.

**H.** Economic development rating criteria is included in Section 2.110.2.26.

**I.** Site visits will be conducted as needed during the life time of the project to verify or review information presented.

**J.** Division staff will present its recommendations in high, medium and low groupings to the council at least seven days prior to the allocation meeting.

**K.** Because emergency, economic development, and rural planning projects are received throughout the year, formal staff rating may not be necessary if all other federal and state requirements are met and other applications are not competing for funding assistance.

[2.110.2.19 NMAC - Rp 2 NMAC 110.2.19, 08-30-01; A, 08-13-04; A, 12-14-06; A, 09-28-07; A, 09-30-08; A, xx-xx-09]

**2.110.2.20 SELECTION OF CDBG GRANTEES BY CDC**

**A.** The council will review

staff recommendations and make funding decisions in an open public meeting.

**B.** In making its final determination, the council will consider the past performance of the applicant in administering active CDBG projects.

**C.** The council may adjust the scope and dollar amount of projects to bring the project within available funding, to enable the council to fund additional projects or for purposes of consistency.

**D.** The council will also consider the applicant's presence at the hearings, the applicant's presentation at the hearings, the council summary of the project application, and the current economic and environmental conditions.

**E.** The council may deviate from staff recommendations, if the council by majority vote determines and substantiates that any of the following conditions apply:

(1) IN ORDER NOT TO FUND A PROJECT RECOMMENDED BY STAFF - other funding sources for the project are available or minimum application requirements were not met or other applications were deemed to be a priority or the application was not well conceived.

(2) IN ORDER TO FUND A PROJECT NOT RECOMMENDED BY STAFF -

(a) the health and safety of area residents is at stake;

(b) funding committed to the project from other sources may be jeopardized;

(c) significant economic benefits will be realized if the project is implemented;

(d) the need for the project is critical.

**F.** The council will make funding determinations by a majority vote.

**G.** The council may waive or adjust any state-imposed rule or requirement relative to project selection and administration of the CDBG program as long as the waiver will not result in violation of state or federal statutes or regulations or penalize other applicants.

**H.** At the yearly allocation hearing, if the council sets aside amount of funding for emergency, economic development or planning, the council may at any time during the calendar year, transfer funds from the economic development, planning and emergency [setasides] set-aside if there is limited demand for funding in these categories. The transferred funds or any reversions from previously approved projects may be used to fund projects which were submitted for funding previously.

[2.110.2.20 NMAC - Rp 2 NMAC 110.2.20, 08-30-01; A, 08-13-04; A, 09-28-07; A, xx-xx-09]

**2.110.2.26 ECONOMIC DEVELOPMENT PROGRAM**

**GUIDELINES:** Within the context of the CDBG program and for purposes of meeting its goals and objectives, economic development can typically be defined as improving a community's economic base by using private and public investments that provide expanded business activity, jobs, personal income and increased local revenues in a defined geographic area.

**A. Goals and objectives:** The state's CDBG economic development goals and objectives include:

(1) creating or retaining jobs for low- and moderate-income persons;

(2) preventing or eliminating slums and blight;

(3) meeting urgent needs;

(4) creating or retaining businesses owned by community residents;

(5) assisting businesses that provide goods or services needed by, and affordable to low - and moderate-income residents;

(6) providing technical assistance to promote any of the activities under Subsection A, Paragraphs (1) through (5) above.

**B. Eligible activities:**

CDBG eligible activities authorized under Sections 570.200, 570.201, 570.202, 570.203, 570.204, 570.482 and 570.483 of 24 CFR Part 570 of the federal rules and regulations governing the community development block grant program and directly affecting the creation or retention of employment opportunities, the majority of which are made available to low and moderate income persons, may include activities which are carried out by public, private nonprofit, or private for-profit entities when such activities are appropriate.

(1) To meet the needs and objectives of the community economic development plan, a project may include; acquisition of real property, construction, reconstruction rehabilitation, or installation of public facilities, site improvements, and utilities, and commercial or industrial buildings or structures and other commercial or industrial real property improvements and planning.

(2) Grantees and nonprofit subrecipients may carry out for the purpose of economic development, a wide range of activities such as those listed in Section 570.203.

(3) The for-profit businesses, however, may carry out only the activities listed in that section and rehabilitation activities listed in Section 570.202.

**C. Financing policies and techniques:**

The New Mexico CDBG program, as a development tool, can provide flexibility and take greater risks in its lending policies and financing techniques. For example, the program may:

(1) offer a negotiated period for

repayment of principal and interest;

(2) take greater risk than banks are traditionally prepared to take, provided substantial economic development benefits will result if the loan is granted;

(3) leverage capital by reducing risk for commercial lenders and by taking a subordinate;

(4) security/collateral position;

(5) provide more favorable rates and terms than are generally available through conventional sources.

**D. Project requirements:**

Project requirements for eligible CDBG economic development assistance include, but are not limited to:

(1) specific employment commitments for low and moderate income residents, generally with no more than \$15,000 in CDBG funds being used for each job created or retained;

(2) at least 51% of the jobs created/retained must be held or made available to persons of low to moderate income persons;

(3) within six (6) months of completion of the project, the grantee is required to report to LGD, documentation to reflect the total number of jobs created;

(4) a firm commitment for private financial participation in carrying out the proposed project, contingent on award of CDBG funding only, must be included with the application;

(5) a minimum leveraging ratio of 1 new private investment dollars to 1 CDBG dollar is required, {additional leveraging will enhance a project's competitiveness};

(6) an "appropriate" determination that there is a well documented need for CDBG assistance to make the project financing feasible and that the level of assistance requested is commensurate with the public benefits expected to be derived from the economic development project;

(7) evidence of project feasibility including a business plan which contains financial statements, project pro forma (cash flow projections) and specific source and intended use of all funds or assets used in the project;

(8) generally, projects that directly assist in the relocation of a business or industry from one community to another, intrastate or interstate, will be disqualified;

(9) prior to submission of an application, applicants should thoroughly review the credit worthiness of the proposed borrower and should obtain appropriate credit reports, audited financial statements, tax returns and verify collateral.

**E. Program income:**

The community development council has adopted a policy of strongly encouraging and, when possible, requiring applicants in the economic development category to return program income to the state for use in fostering critical economic development

opportunities that occur throughout the state. By pooling program income at the state level more of an impact can be made on the overall economic conditions of the state. The Housing and Urban Rural Recovery Act which amended the Housing and Community Development Act of 1974, provides, relative to economic development, specifically the following:

(1) states may require program income to be returned to the state but local governments must be allowed to keep program income when used for the same activity which generated the income (104(i)2);

(2) if the applicant intends to retain program income, a program income utilization plan must be submitted with the application for approval.

**F. Application cycle:** Applications for economic development can be made at any time, and the division staff have thirty days to review [the] them.

**G. Pre-application conference:** It is recommended that a preapplication conference be held prior to the submission of the final application to insure that all elements are adequately addressed. The preapplication conference will also provide an opportunity to review any new federal guidelines that may be issued which relate to economic development activities. Contact the LGD, economic development representative for information. More detailed and extensive financial and project data may be required depending on the specific project. In addition, meeting the national objective to benefit low and moderate income requires documentation certifying that the majority of the jobs go to low and moderate income persons or the majority of jobs are considered available to them. Please contact the local government division for a copy of the HUD guidelines.

**H. APPLICATION REQUIREMENTS:** (These must be included along with the regular CDBG application, and should be submitted in lieu of question #2 in the regular application.)

**(1) Economic development plan:** The applicant must submit as an attachment to the application a short (5 page maximum) description of its plan for encouraging local economic development. The plan, incorporating references to the proposed project, should include a discussion of the following elements

(a) **Need** - What are the community's underlying economic problems? Need might include recent major industry shutdowns or extended layoffs, substantial increases in population without a corresponding increase in job opportunities, substantial population decreases due to lack of available or appropriate job opportunities, a lack of industrial diversification, the existence of large numbers of workers in the

area with obsolete skills or skills for which there is no current demand, or other problems unique to the applicant's community.

(b) **Goals** - What is the community attempting to accomplish through its overall economic development program (not just that activity for which CDBG funding is sought)? Goals might include trying to preserve existing businesses or industries, attempting to encourage community growth, attempting to foster industrial diversification, revitalizing the central business district, or creating complementary industries which would provide jobs in the off-season for workers now only seasonally employed.

(c) **Resources** - What public and private resources, both financial and technical, does the community have available to it to help carry out its economic development program? Resources may be of a wide variety. For example, does the community have a local development corporation or similar body? Has any agency organization assigned staff member(s) to work on economic development activities for a major portion of their time? Has the financial community demonstrated its willingness to participate in development activities? Is there an adequate available labor force to meet the demands of new or expanding businesses and industries? Does the community have some unique development advantages, e.g., location, transportation facilities, industrial park or other plant sites, available raw materials, abundant power supplies, employee training capabilities, a locally-administered revolving loan fund to assist growing businesses or industries, technical assistance programs to help business persons deal with marketing, management, or financial planning problems.

(d) **Strategy** - What strategy is the community using to pursue its economic development goals? Strategy might include a description of the specific activities that have been identified as components of the community's strategy for encouraging local economic development. For example, which has been assigned first, second, and third priority? How much will each cost? What funding sources have been identified for each? What can or will the local government do to support those activities?

(e) **Results** - What actions has the community already undertaken to implement its economic development plan? What sources of funding were used? What were the results? Results might include a discussion of actions the community has taken to encourage development. For example, has it offered property tax reductions to new or expanding industries? Has it formed a local development corporation or prepared industrial or tourism promotion packages? What results have been achieved? How many new jobs have been created or existing

jobs retained? How many new firms have begun operations in the community? How many existing firms have undertaken expansion activities?

**(2) Hiring and training plan:**

(a) Applicants must establish procedures for the project to ensure preferential recruitment, hiring, and training of local workers, particularly those of low and moderate income.

(b) In the event of a grant award, the applicant's commitment to the hiring plan will be considered binding and will be incorporated by reference in the grant agreement between the local governing body and the local government division.

**(3) Private sector commitments:**

(a) Applicants must provide evidence of firm commitments of financial resources from the private sector.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds.

(c) Investments made or costs incurred prior to the grant application are not eligible for use as matching funds or leverage but should be referenced as related to the total project, if applicable.

**(4) Public sector commitments:**

(a) If public sector resources are to be involved in the proposed economic development project, applicants must demonstrate evidence of a firm commitment of public funds or other resources.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds to the project.

(c) Evidence may include resolutions or ordinances passed by the local governing body and other appropriate local groups.

**(5) Use of CDBG funds for economic development loans** (if applicable):

(a) Any project that includes a loan should provide an explanation of the proposed interest rate, terms and rationale for the proposed financing structure.

(b) Any loan made by a local governing body with CDBG funds as a part of an approved CDBG economic development project must be adequately secured.

(c) Subordinated loans may be made when justifiable and appropriate.

(d) The applicant must include a detailed description of the proposed use of program income. (principal and interest). Applicants are encouraged to designate program income to be returned to the state for future economic development [set-aside-eligible] set-aside eligible activities.

**(6) Viability of assisted enterprises:** Any for-profit entity to be assisted with CDBG funds must document that without participation of CDBG funds the proposed activity would not be feasible and that after receipt of CDBG assistance the

enterprise will be viable and self-sustaining. All applicants proposing an economic development activity shall submit the following for any entity to be assisted with CDBG funds.

(a) a business plan which consists of at least a description of the history of the firm, background, and experience of the principals, organizational structure, a description of its major products or services, market area and market share, goals, and planned expansions or changes in operations; the plan should also describe the impact the CDBG project, if funded, would have on the firm's activities;

(b) a three-year to five-year operating plan forecast (profit and loss projection); applicants may use U.S. small business administration (SBA) forms or equivalent;

(c) a monthly cash flow analysis, SBA forms or equivalent.

(d) for any existing business, the two most recent year-end financial statements, including an income statement and balance sheet.

#### I. RATING CRITERIA:

The selection criteria in the rating and ranking system will give priority to projects which firmly demonstrate the following: need, appropriateness, impact, and benefit to low and moderate income persons. These factors are discussed below and are intended to provide additional information. Since each application will be a unique response to particular community-specific needs, there are no "right" or "wrong" activities or solutions. The ranking of "appropriateness" (and later, of "impact") will necessarily be in part subjective, with the division taking into account not only how well each applicant addresses the problems it has defined, but also how its problems and responses compare with those of other applicants. Responses may vary considerably depending upon the size and location of the community and the type of project proposed.

(1) **NEED** - (200 points) - In analyzing an applicant's need for a project, the division will use statistical information provided by the New Mexico department of labor and the U.S. bureau of the census which is uniformly available for all thirty-three (33) counties. Since similar data is not accumulated at the municipal level, cities and towns will be scored with the figures for the county in which they are located. The three factors which will be considered are: the average number of unemployed persons in the county during the last calendar year; the percent of unemployment (average) in the county during the last calendar year; long-term unemployment (measured by average unemployment rates in the county for the last five calendar years).

(a) The data will be calculated and each applicant assigned a relative score.

(b) The division will consider assigning a different score in exceptional cases, where an applicant can conclusively demonstrate that the first two factors used to measure economic need are not reflective of local economic conditions (such as major recent plant closings) and the situation is substantiated by the New Mexico department of labor. A request for consideration of local economic data must be submitted with the CDBG application. The applicant should identify sources of data and define methodologies.

(2) **APPROPRIATENESS** - (200 points) - Two major factors will be weighted in this ranking category: the soundness of the applicant's economic development plan and the related project for which CDBG funding is sought; the strength of the applicant's hiring and training plan for ensuring that local residents, particularly those of low and moderate income, will be hired to fill the stated number of jobs created or retained as a result of CDBG-funded activities. These two factors will be ranked as follows:

(a) **Plan and program** - (140 points) - Some factors which might contribute to the achievement of an "outstanding" score are:

(i) that the applicant has developed a complete, well reasoned, appropriate, and achievable plan for dealing with its total economic development needs, taking into consideration all available public and private resources and local capacity;

(ii) that the local governing body has officially adopted the economic development plan as a matter of public policy;

(iii) that the proposed project for which CDBG funding is sought is an integral part of that plan; (it need not be the first priority item identified in the overall plan if other, more appropriate, resources are available and already being used to meet higher priority items);

(iv) that the applicant has made substantial local efforts to deal with its economic development problems;

(v) that the proposed CDBG project is realistic and workable, and the job savings or creation expected to result from its implementation will occur within a reasonable time following the date of grant award;

(vi) that if income is to be generated by CDBG-funded activities, and retained locally, a plan for the use of that money has been developed and submitted with the application; this plan must include mechanisms established for administration of the funds, (if a revolving loan fund is to be established with program income, procedures must be outlined covering local application processing, time frames, approval, negotiation, pricing, packaging, servicing, etc.);

(vii) that there has been active citizen participation in the development of the economic development plan and in the selection of the CDBG project.

(b) **Hiring and training plan** - (60 points) - Since a primary goal of CDBG-funded economic development grants is to increase job opportunities for local residents, particularly persons of low and moderate income, it is essential that applicants take every measure to bring about that result. Each applicant must include in its application an employment and training plan to be used in filling jobs created or saved as a result of CDBG activities. Factors which would most likely contribute to the achievement of a high score are:

(i) that the applicant's employment and training plan provides clear, complete procedures for outreach, recruitment, screening, selection, training, and placement of workers which will ensure maximum access of local residents, particularly persons of low and moderate income, to jobs created or saved by the project;

(ii) that attention has been given to necessary supportive services for trainees needing them;

(iii) that a complete training curriculum has been developed and all training resources identified;

(iv) that responsibility has been assigned for all phases of the training program;

(v) that a written agreement to follow the plan has been obtained from each firm expected to benefit directly from the program.

(3) **IMPACT** - (200 points) - In weighing the anticipated impact of the applicant's proposed CDBG grant activities on the community's identified problems, the following four factors will be considered and evaluated:

(a) **Leverage** - (50 points) - In preparing its proposed project budget, the applicant is required to identify all sources of funds to be used and the amounts to be contributed by each. To be eligible for consideration, an applicant must provide at least one private non-CDBG dollars for each dollar of CDBG funds requested (a 1:1 ratio). The non-CDBG funds may come from a variety of private sources, such as new investment by a firm to be assisted, bank loans, or local development corporation loans and debentures. Applicants will be ranked against each other. If, for instance, community A has the highest leverage ratio (\$3 of non-CDBG funds for each \$1 of CDBG funds, a 3:1 ratio) and community B has a 1:1 leverage, community A would receive the maximum score and community B and all other applicants would be relatively scored against community A.



**(b) CDBG dollars per job** - (50 points) - The applicant is required to specify the number of permanent full-time jobs to be created or retained as a result of the requested CDBG program. In determining an applicant's score in this category, the total CDBG funds to be used (exclusive of administrative funds) will be divided by the total number of full-time jobs expected to result. NOTE: In evaluating an applicant's job creation projections, the local government division will consider the historical relationships of sales, space, and machines to jobs. It will also look at typical ratios for the industry of which the firm to be assisted is a part. Applicants should be prepared to justify job creation claims which substantially exceed industry norms or \$15,000 per job created or retained.

**(c) Type of jobs** - (50 points) - Although all new or retained jobs provide some measure of economic benefit to the community, full-time, skilled or semi-skilled positions are more desirable for most workers than part-time jobs or those requiring unskilled labor. One objective of CDBG economic development activities is to foster the creation and retention of permanent, full-time employment with growth potential for persons of low and moderate income, which offers those workers an opportunity for advancement in a firm or industry. Applicants are required to indicate the percentage of jobs to be created or retained which are full-time or part-time, skilled, semi skilled, or unskilled.

**(d) Overall economic impact** - (50 points) - The applicant must discuss both the direct and indirect effects the CDBG program is expected to have on the community's economy. Some of the factors which will be considered in evaluating impact are:

**(i)** the size of the additional payroll expected to be generated for the jobs created or retained by the program;

**(ii)** the total number of jobs to be created or retained;

**(iii)** whether the firm to be assisted is a primary industry (producing goods or services mainly to be sold outside the area or state, thereby importing dollars into the community and state);

**(iv)** whether local property tax revenues will be significantly increased as a result of the proposed business start-up, expansion, retention, etc.;

**(v)** the applicant demonstrating the greatest positive impact will be scored highest; all other applicants will be ranked correspondingly;

**(vi)** when applications have been scored in all four categories (leverage, dollars per job, types of jobs, and overall economic impact), those scores will be totaled.

**(4) BENEFIT TO LOW AND MODERATE INCOME PERSONS** - (200 points)

**(a)** This ranking criterion assesses the extent to which persons of low and moderate income will directly benefit from the expenditure of CDBG grant funds. To determine this score, the number of jobs to be created or retained and made available to low and moderate income persons will be divided by the total number of jobs to be created or retained as a result of the CDBG program.

**(b)** The highest score will receive up to a maximum of 200 points and all other applicants will be scored accordingly.

**(c)** To be eligible for consideration a project must demonstrate that it will benefit principally persons of low and moderate income.

[2.110.2.26 NMAC - Rp 2 NMAC 110.2.26, 08-30-01; A, 12-14-06; A; 09-28-07; A, xx-xx-09]

#### Attachment to 2.110.2.14 NMAC

#### RURAL COUNTIES (EXHIBIT A) PER 2000 HUD APPROVED U.S. CENSUS DATA

### NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

#### Notice of Public Hearing

This Human Services Register requests public comments on the annual LIHEAP State Plan. Each year, the LIHEAP State Plan is submitted to the Federal administering agency, the Department of Health and Human Services (DHHS). The LIHEAP State Plan will be amended to reflect the administration of the LIHEAP program in Federal Fiscal Year (FFY) 2010 and to make required adjustments to the LIHEAP Federal poverty guidelines (FPG) as required by federal statute.

The Department proposes to amend language in NMAC parts 8.150.110.8 and 8.150.524.9. No other changes are proposed for FFY 2010.

The Department proposes to amend 8.150.110.8 to clarify policy regarding receipt of LIHEAP in a FFY. Receipt of a LIHEAP benefit from any other LIHEAP administering entity (tribe, state or territory) funded by HHS during any federal fiscal year would prohibit the receipt of LIHEAP in New Mexico during that FFY.

The Department proposes to amend 8.150.524.9 to clarify policy regarding

maximum income guidelines that may be used by HSD to improve program administrative flexibility. Federal statute allows the use of 150% of FPG, 60% of state median income or other guidelines that may be designated by Congress or federal statute amendments. For FFY 2009, Congress increased income guidelines to 75% of state median income at state option for FFY 2009. Current LIHEAP rules limit income eligibility in New Mexico to the maximum allowable of 150% of poverty. These proposed rules allow the Department to have the discretion to adopt any of the allowable income eligibility guidelines as designated by federal statute or in congressional appropriations.

The current LIHEAP State Plan can be viewed on the HSD website at <http://www.hsd.state.nm.us/isd/ISDPlans.html>.

The changes that are proposed in policy will be incorporated into the FFY 2010 LIHEAP State Plan. The current LIHEAP State Plan can be viewed on the HSD website at <http://www.hsd.state.nm.us/isd/ISDPlans.html>. The current regulations can be viewed on the internet at <http://www.nmcp.state.nm.us/nmac/title08/T08C150.htm>.

Individuals wishing to request a copy of the current and proposed rule changes and/or the current and the proposed LIHEAP State Plan should contact the Income Support Division, Work and Family Support Bureau, P O Box 12740, Albuquerque, New Mexico 87195-0740, or by calling 1-888-523-0051.

**8.150.524.9 I N C O M E STANDARD:** Income guidelines for eligibility will be updated at the beginning of each federal fiscal year as required by federal statute. The guidelines will be effective for the entire federal fiscal year beginning October 1 and ending September 30. The income guidelines will be determined by the secretary of the human services department before the beginning of the new federal fiscal year. The gross monthly income guidelines maximum [will be] may be one of the allowable which includes 150% of the applicable federal poverty guidelines, 60% of the state median income or other income allowable by the appropriation. LIHEAP income guidelines are available from all human services department income support division offices, by writing to: Human Services Department LIHEAP [P-O Box 26507 Albuquerque NM 87125-6507] P O Box 12740 Albuquerque NM 87195-0740 or by contacting the income support division customer service desk at 1 800 283-4465 or New Mexico Relay at 1 800 659-8331. If you are disabled and need the guidelines in an alternative format, please [make the request when you contact us] notify HSD

with a request. The income guidelines are also located on the HSD income support division web site at [<http://www.state.nm.us/hsd/isd.html>] <http://www.hsd.state.nm.us/isd/liheap.html>. [11-15-96, 11-01-97, 10-15-98, 10-1-99, 10-1-00; 8.150.524.9 NMAC - Rn, 8 NMAC 22.LHP.524 & A, 10-1-01; A, 10-01-06; A, xx-xx-09]

#### 8.150.110.8 RIGHT TO APPLY:

A. Clients/applicants: Anyone has the right to apply for any benefits provided by ISD whether or not it appears that he/she will be eligible.

#### B. Outreach:

(1) HSD responsibilities: HSD conducts outreach regarding the LIHEAP program to eligible households, and particularly elderly and disabled households, through the ISD field offices and all of the offices and suboffices of the state's community action agencies. Additional outreach efforts to elderly and disabled households are made through workshops and conferences held by the state's agency on aging.

(2) Community action agency responsibility: HSD coordinates with the community action agencies to provide information and outreach services regarding LIHEAP and other energy-related assistance programs.

C. Barrier free policy: It is HSD's policy to make the application process for these households as barrier-free as possible. This includes:

(1) paperwork reduction and not requiring reverification by the household of information already available to HSD, such as SSI status;

(2) ease of access to physical locations where application may be made; and

(3) provision of additional assistance for any household or household member who requires it.

D. Annual benefit: Each eligible household will be issued one benefit each federal fiscal year. The benefit may be issued in one or multiple payments depending on the funding availability and the approval of the HSD secretary. Receipt of a LIHEAP benefit from any other LIHEAP administering entity (tribe, state or territory) funded by HHS during any federal fiscal year would prohibit the receipt of LIHEAP in New Mexico during that FFY.

E. Second application period: A second application period may be established under certain conditions at the direction of the HSD secretary. A second application period will be announced in the media. Situations which may justify a second application period include:

(1) funding levels are predicted to exceed allowable carryover of federal funds

to the next federal fiscal year.

(2) emergency weather circumstances.

[7-1-95, 11-1-95, 11-15-96, 10-15-98, 10-1-00; 8.150.110.8 NMAC - Rn, 8 NMAC 22.LHP.111 & A, 10-1-01; A, xx-xx-09]

The Department proposes to implement these regulations effective October 1, 2009.

A public hearing to receive testimony on these proposed regulations will be held September 14, 2009 at 10:00 AM. The hearing will be held in the Law Library at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 57505. Parking accessible to persons with physical impairments will be available.

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 service, please contact the NM Human Services Department toll free at 1-800-432-6217 or through the Relay New Mexico system, toll free at 1-800-659-8331. The Department requests at least ten-day advance notice to provide requested alternative formats and special accommodations.

Interested parties may also address comments by electronic mail to: [loretta.williams@state.nm.us](mailto:loretta.williams@state.nm.us)

These comments must be received no later than 5:00 P.M., on September 14, 2009. Written and recorded comments will be given the same consideration as oral comments made at the public hearing.

Interested persons may address written or recorded comments to:

Pamela S. Hyde, J.D., Secretary  
Human Services Department  
P.O. Box 2348  
Santa Fe, New Mexico 87504-2348

Publication of these proposed regulations approved on August 3, 2009 by:

PAMELA S. HYDE, J.D., SECRETARY

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

### NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 10:00 a.m., on September 15, 2009, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing will be Intensive Outpatient Program (IOP) Services.

The Human Services Department, Medical Assistance Division, is proposing a new rule, 8.310.15 NMAC, *Intensive Outpatient Program (IOP) Services*. IOP services are provided to youth, aged 13-17 years, diagnosed with substance abuse disorders or with co-occurring disorders (serious emotional disturbance and substance abuse) or that meet the American Society of Addiction Medicine (ASAM) patient placement criteria for level two (II) - intensive outpatient treatment and to adults aged 18 years and over diagnosed with substance abuse disorders or with co-occurring disorders (serious mental illness and substance abuse) or that meet the ASAM patient placement criteria for level two (II) - intensive outpatient treatment. The IOP model is based on research and evidence-based interventions that target specific behaviors with individualized behavioral interventions.

Interested persons may submit written comments no later than 5:00 p.m., September 15, 2009, to Pamela S. Hyde, J.D., Secretary, Human Services Department, PO 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](http://www.hsd.state.nm.us/mad/registers) by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, PO Box 2348, Santa Fe, NM. 87504-2348.

## NEW MEXICO COMMISSIONER OF PUBLIC LANDS

### NOTICE OF RULE MAKING

**NOTICE IS HEREBY GIVEN** that Patrick H. Lyons, New Mexico Commissioner of Public Lands (Commissioner), and the New Mexico State Land Office (NMSLO) propose a new rule 19.2.22 NMAC "PLANNING AND DEVELOPMENT LEASE". Material in this rule has not been previously filed with

the State Records Center and Archives.

The proposed new rule provides new guidelines and requirements that pertain to all planning and development leases granted on lands held in the Trust managed by the New Mexico Commissioner of Public Lands pursuant to the Act of June 20, 1910, 36 Stat. 557, Chapter 310; N.M. Const. Art. XIII; and NMSA 1978, Chapter 19.

The Commissioner will take written comments on the proposed rule from any interested person. Interested persons shall file their written comments no later than September 15, 2009. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include specific language proposed to effectuate the changes being suggested. Specific proposed language changes to the proposed new rule should, whenever possible, be in the same format that the proposed rule is in. A copy of the proposed rule in electronic format may be obtained from the Commissioner to facilitate this requirement. Any proposed changes to the proposed rule shall be submitted either in hard copy or by e-mail. The Commissioner strongly encourages all persons submitting comments in hard copy to file an additional copy in electronic format. The electronic medium shall clearly designate the name of the person submitting the proposed changes.

One public hearing to receive oral and written comments on proposed Rule 22 will be held in Santa Fe, New Mexico, at Morgan Hall, State Land Office, 310 Old Santa Fe Trail, from 9:00 a.m. to 11:00 a.m. on Monday, September 14, 2009.

Please submit any written comments regarding the proposed rule to the attention of Ley Schimoler at the address set forth below and/or by e-mail to Ley Schimoler at [lschimoler@slostate.nm.us](mailto:lschimoler@slostate.nm.us). Comments received by e-mail will be printed by the NMSLO and entered in the rule-making record.

The Commissioner will review and take into consideration all timely submitted written comments. If the Commissioner deems it advisable, he may have further meetings with any persons or entities submitting written comments.

A copy of the proposed rule may be obtained from:

Ley Schimoler  
Office of the General Counsel  
New Mexico State Land Office  
PO Box 1148  
Santa Fe, NM 87504-1148  
Tel: 505/827-5713  
Fax: 505/827-4262

Copies of the proposed rule may also be viewed at, or downloaded from the NMSLO website ([www.nmstatelands.org](http://www.nmstatelands.org)). Upon request the documents may be made available in alternative formats.

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**NEW MEXICO  
DEPARTMENT OF PUBLIC  
SAFETY  
TRAINING AND RECRUITING  
DIVISION  
Law Enforcement Academy**

Notice

**NEW MEXICO DEPARTMENT OF  
PUBLIC SAFETY  
NM LAW ENFORCEMENT ACADEMY  
BOARD MEETING AND PUBLIC  
HEARING**

On Thursday September 24, 2009, at 9:00 a.m., the New Mexico Law Enforcement Academy Board will hold a Regular Board Meeting to include two Public Hearings. The Public Hearings will include 10.29.8 Officer Transition Program, 10.29.6.10 Eligibility of Retirees.

The NMLEA Board Meeting and public hearing will be held at the Lifts West Hotel 201 W. Main Red River, NM 87558.

Copies of the Regular Board Meeting Agenda's and proposed rule changes may be obtained by accessing our website at [www.dps.nm.org/training](http://www.dps.nm.org/training) or by calling Arthur Ortiz at (505) 827-9290, Gil Najar at (505) 827-9265 or Monique Croker at (505) 827-9255.

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**NEW MEXICO PUBLIC  
SCHOOLS INSURANCE  
AUTHORITY**

**NOTICE OF PUBLIC HEARING ON  
PROPOSED RULES FOR PUBLIC  
SCHOOLS CONCERNING USE OF  
VOLUNTEERS AND USE OF SCHOOL  
FACILITIES BY PRIVATE PERSONS**

Notice is hereby given pursuant to amendments to Sections 22-29-7(E) and 22-29-7(F), NMSA 1978 (being Laws 1986, Chapter 94, Section 7 as amended) that the New Mexico Public Schools Insurance Authority plans to adopt regulations concerning the use of volunteers in public schools and the use of school facilities by private persons.

The proposed new rules will be discussed and comments taken at a public hearing to be held on Thursday, September 24, 2009 at

9:00 a.m. at the offices of the Coppler Law Firm, 645 Don Gaspar Avenue, Santa Fe, New Mexico 87505. The recommendations of the hearing officer will be presented to the New Mexico Public Schools Insurance Authority Board Meeting on Thursday, October 8, 2009 at 9:00 a.m. at the Cooperative Educational Services, 4216 Balloon Park Rd. NE, Albuquerque, NM 87109. The Board Meeting will be called pursuant to Subsection H of 6.50.1.9 NMAC of the Board's Rules and Regulations and as provided by the current Open Meeting Act Resolution of the Authority. Copies of the proposed rules may be obtained before the meeting at the New Mexico Public Schools Insurance Authority's offices at 410 Old Taos Highway, Santa Fe, New Mexico or by contacting Frank R. Coppler (505) 988-5656 or by e-mail to [fcoppler@coppler.com](mailto:fcoppler@coppler.com).

Interested persons may submit written comments to the New Mexico Public Schools Insurance Authority at 410 Old Taos Highway, Santa Fe, New Mexico 87501 or e-mail comments to [fcoppler@coppler.com](mailto:fcoppler@coppler.com) to be received by 5:00 p.m. September 23, 2009. Written comments shall suggest specific reasons for any suggested amendments or comments and include any proposed amendatory language.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the office of the Executive Director of the New Mexico Public Schools Insurance Authority at 1-800-548-3724 prior to the hearing, or as soon as possible. The proposed rules can be provided in various accessible formats. Please contact the office of the Executive Director of the New Mexico Public Schools Insurance Authority at 1-800-548-3724 if a summary or other type of accessible format is needed before September 21, 2009. If accommodation is not requested in advance we cannot guarantee the availability of accommodation on-site.

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**End of Notices and Proposed  
Rules Section**

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## Adopted Rules

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.2 NMAC, Section 7 effective 8/31/09.

**20.2.2.7 DEFINITIONS:** The following definitions apply to all Parts of Title 20, Chapter 2 NMAC.

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

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

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

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

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

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

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

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

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

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

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

**L. "Fugitive dust" or "fugitive particulate matter"** means particulate emissions which escape to

the atmosphere due to leakage; materials handling, transfer or storage; travel over unpaved roads or parking areas; or other industrial activities, and which are not ducted through exhaust systems.

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

**N. "Heavy metal"** means any metal having an atomic number greater than 21.

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

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

**Q. "Kraft pulp"** means the fibrous cellulose material produced in a kraft mill.

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

**S. "Methane"** means the chemical compound containing one atom of carbon and four atoms of hydrogen.

**T. "mg/m<sup>3</sup>"** means milligrams per cubic meter.

**U. "Nitrogen dioxide"** means the chemical compound containing one atom of nitrogen and two atoms of oxygen, for the purposes of ambient determinations. The term "nitrogen dioxide," for the purposes of stack emissions monitoring, shall include nitrogen dioxide (the chemical compound containing one atom of nitrogen and two atoms of oxygen), nitric oxide (the chemical compound containing one atom of nitrogen and one atom of oxygen), and other oxides of nitrogen which may test as nitrogen dioxide.

**V. "Nitrous oxide"** means the chemical compound containing two atoms of nitrogen and one atom of oxygen.

**W. "Non-methane hydrocarbons"** means any combination of hydrocarbons (chemical compounds consisting of hydrogen and carbon) excluding only the molecule methane.

**X. "Ozone"** means the chemical compound having the molecular composition of three oxygen atoms.

**Y. "Particulate matter"** means any airborne, finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

**Z. "Particulate matter emissions"** means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured

by: applicable reference methods; an equivalent or alternative method specified by the administrator; or a test method specified in the New Mexico state implementation plan.

**AA. "Perfluorocarbons"** means gaseous chemical compounds containing only carbon and fluorine atoms.

**AB. "Person"** means any individual; partnership; corporation; association; municipality; the state or political subdivision of the state; and any agency, department, or instrumentality of the United States and any of their officers, agents, or employees.

**AC. "Photochemical oxidants"** means those oxidizing chemical compounds which are the products of photo initiated reactions involving organic compounds and nitrogen oxides, consisting primarily of ozone and peroxyacetyl nitrate (PAN).

**AD. "PM<sub>10</sub>"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

**AE. "PM<sub>10</sub> emissions"** means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air, as measured by: an applicable reference method; an equivalent or alternative method specified by the EPA administrator; or a test method specified in the New Mexico state implementation plan.

**AF. "PM<sub>2.5</sub>"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

**AG. "PM<sub>2.5</sub> emissions"** means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, emitted to the ambient air, as measured by: an applicable reference method; an equivalent or alternative method specified by the EPA administrator; or a test method specified in the New Mexico state implementation plan.

**[AF] AH. "ppm"** means parts per million by volume.

**[AG] AI. "Ringelmann scale"** means the grading of opacity, appearance, density or shade of a smoke emission, in determining the light-obscuring power of smoke.

**[AH] AJ. "Schedule of compliance"** means a schedule or timetable, acceptable to the board, which clearly sets out in detail, the steps to be taken in achieving the objectives of a regulation or standard.

**[AH] AK. "Secretary"** means the secretary of the New Mexico environment department or his or her designee.

**[AF] AL. "Smoke"** means small gas-borne particles resulting from incomplete combustion, consisting predominantly, by not exclusively, of carbon, soot and combustible material.

**[AK] AM. "Sulfur dioxide"** means the chemical compound containing one atom of sulfur and two atoms of oxygen, for the purposes of ambient determinations. The term sulfur dioxide, for the purposes of stack emissions monitoring, shall include sulfur dioxide (chemical compound containing one atom of sulfur and two atoms of oxygen), and other oxides of sulfur which may test as sulfur dioxide.

**[AE] AN. "Sulfur hexafluoride"** means the chemical compound containing one atom of sulfur and six atoms of fluorine.

**[AM] AO. "Total reduced sulfur"** means any combination of sulfur compounds, except sulfur dioxide and free sulfur, which test as total reduced sulfur, including, but not limited to, hydrogen sulfide, methyl mercaptan, and ethyl mercaptan.

**[AN] AP. "Total suspended particulates (TSP)"** means particulate matter as measured by the method described in 40 CFR Part 50, Appendix B.

**[AO] AQ. "u g / m 3"** means micrograms per cubic meter.

**[AP] AR. "US EPA"** means the United States environmental protection agency.

**[AQ] AS. "Volatile organic compound (VOC)"** means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity.

[10/27/95; 20.2.2.7 NMAC - Rn, 20 NMAC 2.2.200 10/31/02; A, 01/01/08; A, 08/31/09]

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.74 NMAC, Sections 7, 502, and 503 effective 8/31/09.

### 20.2.74.7 DEFINITIONS:

Terms used but not defined in this part shall have the meaning given them by 20.2.2 NMAC (Definitions) (formerly AQCR 100). As used in this part the following definitions shall apply.

**A. "Act"** means the Federal Clean Air Act, as amended, 42 U. S. C. Sections 7401 et seq.

**B. "Actual emissions"** means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with Paragraphs (2) through (4) of this subsection.

(1) This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 20.2.74.320 NMAC. Instead, Subsections G and AQ of this section shall apply for those purposes.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(3) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

**C. "Administrator"** means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

**D. "Adverse impact on visibility"** means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the class I federal area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with the following: 1) times of visitor use of the class I federal area; and 2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

**E. "Allowable emissions"** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) the applicable standards as set forth in 40 CFR Parts 60 and 61;

(2) the applicable state implementation plan emissions limitation, including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

**F. "Attainment area"** means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling not to exceed any national ambient air quality standard for such pollutant, and is so designated under Section 107 (d) (1) (D) or (E) of the act.

**G. "Baseline actual emissions"** means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used For each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of this paragraph.

(2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under this part or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier

than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of this paragraph.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of this subsection, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of this subsection, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of this subsection.

**H. "Baseline area"** means all lands designated as attainment or unclassifiable in which the major source or major modification would construct or would have an air quality impact equal to

or greater than one microgram per cubic meter (annual average) of the pollutant for which the minor source baseline date is established. The major source or major modification establishes the minor source baseline date (see the definition "minor source baseline date" in this part). Lands are designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the act within each federal air quality control region in the state of New Mexico. Any baseline area established originally for TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments. A TSP baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date (see "minor source baseline date" in this part).

**I. "Baseline concentration"** means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

(1) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) the actual emissions, as defined in this section, representative of sources in existence on the applicable minor source baseline date, except as provided in Paragraph (2) of this subsection;

(b) the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) actual emissions, as defined in this section, from any major stationary source on which construction commenced after the major source baseline date; and

(b) actual emissions increases and decreases, as defined in Subsection B of this section, at any stationary source occurring after the minor source baseline date.

**J. "Begin actual construction"** means, in general, initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

**K. "Best Available Control Technology (BACT)"** means an emissions limitation (including a visible

emission standard) based on the maximum degree of reduction for each regulated pollutant which would be emitted from any proposed major stationary source or major modification, which the secretary determines is achievable on a case-by-case basis. This determination will take into account energy, environmental, and economic impacts and other costs. The determination must be achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutants. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

**L. "Building, structure, facility, or installation"** means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same first two digit code) as described in the standard industrial classification (SIC) manual, 1972, as amended by the 1977 supplement (U. S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively) or any superseding SIC manual.

**M. "Class I federal area"** means any federal land that is classified or reclassified as "class I" as described in 20.2.74.108 NMAC.

**N. "Commence"** means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary preconstruction approvals or permits and has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake and complete, within a reasonable time, a program of actual construction.

**O. "Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

**P. "Continuous emissions monitoring system (CEMS)"** means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

**Q. "Continuous emissions rate monitoring system (CERMS)"** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

**R. "Continuous parameter monitoring system (CPMS)"** means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter value(s) on a continuous basis.

**S. "Department"** means the New Mexico environment department.

**T. "Electric utility steam generating unit"** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

**U. "Emissions unit"** means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric utility steam generating unit as defined in this section. For purposes of this section, there are two types of emissions units as described in the following.

(1) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of this subsection. A replacement unit, as defined in this section, is an existing unit.

**V. "Federal land manager"** means, with respect to any lands in the United States, a federal level cabinet secretary of a federal level department (e.g. interior dept.) with authority over such lands.

**W. "Federally enforceable"** means all limitations and conditions which are enforceable by the administrator, including:

(1) those requirements developed pursuant to 40 CFR Parts 60 and 61;

(2) requirements within any applicable state implementation plan;

(3) any permit requirements established pursuant to 40 CFR 52.21; or

(4) under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

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

**Y. "High terrain"** means any area having an elevation nine hundred (900) feet or more above the base of a source's stack.

**Z. "Indian governing body"** means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

**AA. "Innovative Control Technology"** means any system of air pollution control that has not been adequately demonstrated in practice. But such system would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

**AB. "Low terrain"** means any area other than high terrain.

**AC. "Lowest achievable emission rate"** means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a

modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

**AD. "Major modification"** means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in of this section) of a regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which:

(i) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source;

(h) the installation, operation, cessation, or removal of a temporary clean



coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan for the state in which the project is located; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit; this exemption shall apply on a pollutant-by-pollutant basis;

(j) the reactivation of a very clean coal-fired electric utility steam generating unit.

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.2.74.320 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.74.320 NMAC shall apply.

**AE. "Major source baseline date"** means:

(1) in the case of particulate matter and sulfur dioxide, January 6, 1975; and

(2) in the case of nitrogen dioxide, February 8, 1988.

**AF. "Major stationary source"** means the following.

(1) Any stationary source listed in table 1 (20.2.74.501 NMAC) which emits, or has the potential to emit, emissions equal to or greater than one hundred (100) tons per year of any regulated new source review pollutant.

(2) Any stationary source not listed in table 1 (20.2.74.501 NMAC) and which emits or has the potential to emit two hundred fifty (250) tons per year or more of any regulated new source review pollutant.

(3) Any physical change that would occur at a stationary source not otherwise qualifying under Paragraphs (1) or (2) of this subsection if the change would constitute a major stationary source by itself.

(4) A major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone.

(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 (20.2.74.501 NMAC) or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

**AG. "Mandatory class I federal area"** means any area identified in

the Code of Federal Regulations (CFR), 40 CFR Part 81, Subpart D. See 20.2.74.108 NMAC for a list of these areas in New Mexico.

**AH. "Minor source baseline date"** means the earliest date after the trigger date on which the owner or operator of a major stationary source or major modification subject to 40 CFR 52.21 or to this part submits a complete application under the relevant regulations.

(1) The trigger date is:

(a) in the case of particulate matter and sulfur dioxide, August 7, 1977; and

(b) in the case of nitrogen dioxide, February 8, 1988.

(2) Any minor source baseline date established originally for the TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments. The department may rescind any TSP minor source baseline date where it can be shown, to the department's satisfaction, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date, did not result in a significant amount of PM-10 emissions.

**AI. "Natural conditions"** includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

**AJ. "Necessary preconstruction approvals or permits"**

means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the New Mexico state implementation plan.

**AK. "Net emissions increase"** means, with respect to any regulated new source review pollutant emitted by a major stationary source, the following.

(1) The amount by which the sum of the following exceeds zero.

(a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection D of 20.2.74.200 NMAC.

(b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph shall be determined as provided in Subsection G, except that Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection G of this section shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only

if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

(b) the department has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(a) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) Paragraph (2) of Subsection B of this section shall not apply for determining creditable increases and decreases.

**AL. "Nonattainment area"** means an area which has been designated under Section 107 of the Federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by EPA.

**AM. "Portable stationary source"** means a source which can be relocated to another operating site with limited dismantling and reassembly.

**AN. "Potential to emit"** means the maximum capacity of a stationary source to emit a pollutant under

its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollutant control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

**AO. "Predictive emissions monitoring system (PEMS)"** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

**AP. "Project"** means a physical change in, or change in method of operation of, an existing major stationary source.

**AQ. "Projected actual emissions"** means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated new source review pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

(1) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(2) shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection G of this section and that are also unrelated to the particular project,

including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of this subsection, may elect to use the emissions unit's potential to emit, in tons per year, as defined in Subsection AQ of this section.

**AR. "Regulated new source review pollutant"**, for purposes of this part, means the following:

(1) any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds and nitrogen oxides are precursors for ozone);

(2) any pollutant that is subject to any standard promulgated under Section 111 of the act;

(3) any class I or II substance subject to a standard promulgated under or established by title VI of the act; or

(4) any pollutant that otherwise is subject to regulation under the act; except that any or all hazardous air pollutants either listed in Section 112 of the act or added to the list pursuant to Section 112(b) (2) of the act, which have not been delisted pursuant to Section 112(b)(3) of the act, are not regulated new source review pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the act.

**AS. "Replacement unit"** means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**AT. "Secondary emissions"** means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions

must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

**AU. "Secretary"** means the cabinet level secretary of the New Mexico environment department or his or her successor.

**AV. "Significant"** means in reference to a net emissions increase or the potential of a source to emit air pollutants, a rate of emission that would equal or exceed any of the rates listed in table 2 (20.2.74.502 NMAC).

**AW. "Significant emissions increase"** means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection AV of this section) for that pollutant.

**AX. "Stationary source"** means any building, structure, facility, or installation which emits, or may emit, any regulated new source review pollutant.

**AY. "Temporary source"** means a stationary source which changes its location or ceases to exist within two years from the date of initial start of operations.

**AZ. "Visibility impairment"** means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

**BA. "Volatile organic compound (VOC)"** means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity.

[07/20/95; 01/01/00; 20.2.74.7 NMAC - Rn, 20 NMAC 2.74.107, 10/31/02; A, 1/22/06; A, 8/31/09]

[Continued on page 1029]

20.2.74.502 TABLE 2 - SIGNIFICANT EMISSION RATES:

POLLUTANT	EMISSION RATE (TONS/YR)
Carbon monoxide	100
Fluorides	3
Lead	0.6
Municipal waste combustor Acid gases (measured as sulfur dioxide and hydrogen chloride) Metals (measured as particulate matter) Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	40 (36 megagrams/year) 15 (14 megagrams/year) 0.0000035 (0.0000032 megagrams/yr)
Nitrogen oxides	40
Ozone ([as-VOC;] Volatile Organic Compounds or nitrogen oxides)	40 [(VOC)]
Particulate Matter Particulate matter emissions PM-10 emissions	25 15
Sulfur compounds Hydrogen sulfide (H2S) Reduced sulfur compounds (incl. H2S) Sulfur dioxide Sulfuric acid mist Total reduced sulfur (incl. H2S)	10 10 40 7 10
Any other pollutant regulated under the act that is not listed in this table	Any emission rate
Each regulated pollutant	Emission rate or net emissions increase associated with a major stationary source or major modification that causes an air quality impact of one microgram per cubic meter or greater (24-hr average) in any class I federal area located within 10 km of the source.

[07/20/95; 20.2.74.502 NMAC - Rn, 20 NMAC 2.74 Table 2, 10/31/02; A, 1/22/06; A, 8/31/09]

20.2.74.503 TABLE 3 - SIGNIFICANT MONITORING CONCENTRATIONS.

POLLUTANT	AIR QUALITY CONCENTRATION micrograms per cubic meter	AVERAGING TIME
Carbon monoxide	575	8 hours
Fluorides	0.25	24 hours
Lead	0.1	3 months
Nitrogen dioxide	14	Annual
Ozone	b	
Particulate matter (PM-10)	10	24 hours
Sulfur compounds Hydrogen sulfide (H2S) Reduced sulfur compounds (incl. H2S) Sulfur dioxide Sulfuric acid mist Total reduced sulfur (incl. H2S)	0.20 10 13 a 10	1 hour 1 hour 24 hours 1 hour
a - No acceptable monitoring techniques available at this time. Therefore, monitoring is not required until acceptable techniques are available.		
b -No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.		

[07/20/95; 20.2.74.503 NMAC - Rn, 20 NMAC 2.74 Table 3, 10/31/02; A, 1/22/06; A, 8/31/09]

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.79 NMAC, Sections 7, 109, and 115 effective 08/31/09.

**20.2.79.7 DEFINITIONS.** In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part, the following terms apply.

**A. "Actual emissions"** means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with the following, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide applicability limit under 20.2.79.120 NMAC. Instead, Subsections E and AI of this section shall apply for those purposes.

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

**B. "Administrator"** means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

**C. "Adverse impact on visibility"** means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with: 1) times of visitor use of the mandatory federal class I area; and 2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

**D. "Allowable emissions"**

means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) the applicable standard set forth in 40 CFR Part 60 or 61;

(2) any applicable state implementation plan emissions limitation including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

**E. "Baseline actual emissions"** means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of Paragraph (1) of this subsection.

(2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month

period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under this section or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of Subsection D of 20.2.79.115 NMAC.

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (2) of this subsection.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a plantwide applicability limit for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures

contained in Paragraph (1) of this subsection, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of this subsection, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of this subsection.

**F. "Begin actual construction"** means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building support and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

**G. "Best available control technology (BACT)"** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated new source review pollutant which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

**H. "Building, structure, facility, or installation"** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major

group" (i.e., which have the same two-digit code) as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement (U.S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively).

**I. "Commence"** as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

**J. "Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

**K. "Continuous emissions monitoring system" (CEMS)** means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

**L. "Continuous emissions rate monitoring system" (CERMS)** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

**M. "Continuous parameter monitoring system" (CPMS)** means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and to record average operational parameter value(s) on a continuous basis.

**N. "Electric utility steam generating unit"** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected

facility.

**O. "Emissions unit"** means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric steam generating unit as defined in Subsection N of this section. For purposes of this section, there are two types of emissions units.

(1) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than 2 years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of this subsection. A replacement unit, as defined in this section, is an existing unit.

**P. "Federal class I area"** means any Federal land that is classified or reclassified "class I".

**Q. "Federal land manager"** means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

**R. "Federally enforceable"** means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

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

**T. "Lowest achievable emission rate"** means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source; in no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

**U. "Major modification"** means any physical change in or change

in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the federal Clean Air Act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which:

(i) the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source; or

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan for the state in which is project is located, and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(2) This definition shall not apply with respect to a particular regulated new

source review pollutant when the major stationary source is complying with the requirements under 20.2.79.120 NMAC for a plantwide applicability limit for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.79.120 NMAC shall apply.

(3) For the purpose of applying the requirements of Subsection H of 20.2.79.109 NMAC to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to subpart 2, part D, title I of the federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(4) Any physical change in, or change in the method of operation of a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act.

V. "Major stationary source" means the following.

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated new source review pollutant, except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the [subject to regulation under of the] federal Clean Air Act, according to Subparagraphs (a) through (f) of Paragraph (1) of Subsection V of 20.2.79.7 NMAC.

(a) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(b) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(c) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(d) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(e) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the United States environmental protection agency administrator).

(f) 70 tons per year of PM10 in any serious nonattainment area for PM10.

(2) For the purposes of applying the

requirements of Subsection H of 20.2.79.109 NMAC to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in Subparagraphs (a) through (f) of Paragraph (1) of Subsection V of 20.2.79.7 NMAC shall apply in areas subject to subpart 2 of part D, title I of the federal Clean Air Act.

(a) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(b) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(c) 100 tons per year or more of nitrogen oxides in any area designated under section 107(D) if the federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(d) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(e) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(f) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

(3) Any physical change that would occur at a stationary source not qualifying under Paragraph (1) or (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

(4) A major stationary source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone.

(5) A stationary source shall not be a major stationary source due to fugitive emissions, to the extent they are quantifiable, unless the source belongs to:

(a) any category in Subsection B of 20.2.79.119 NMAC; or

(b) any other stationary source category which as of August 7, 1980 is being regulated under Section 111 or 112 of the federal Clean Air Act.

(6) A stationary source shall not be a major stationary source due to secondary emissions.

W. "Mandatory federal class I area" means those federal lands that are international parks, national wilderness areas which exceed five thousand (5,000) acres in size, national memorial parks which exceed five thousand (5,000) acres in size, and national parks which exceed six thousand (6,000) acres in size, and which were in existence on August 7, 1977. These areas may not be redesignated.

**X. “Natural conditions”** includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

**Y. “Necessary preconstruction approvals or permits”** means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable state implementation plan.

**Z. “Net emissions increase”.**

(1) With respect to any regulated new source review pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection E of 20.2.79.109 NMAC; and

(b) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases shall be determined as provided in Subsection E of this section, except that Subparagraphs (c) and (d) of Paragraph (2) of Subsection E of this section shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs;

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

(b) either the department or the administrator has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

(a) the old level of actual emissions or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(c) the department has not relied

on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(d) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(7) Paragraph (1) of Subsection A of this section shall not apply for determining creditable increases and decreases or after a change.

**AA. “Nonattainment area”** means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under Subparagraphs (A) through (C) of Section 107(d)(1) of the federal Clean Air Act.

**AB. “Nonattainment major new source review (NSR) program”** means a major source preconstruction permit program that has been approved by the administrator and incorporated into the New Mexico state implementation plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is a major new source review permit.

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

**AD. “Portable stationary source”** means a source which can be relocated to another operating site with limited dismantling and reassembly.

**AE. “Potential to emit”** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable.

**AF. “Predictive emissions monitoring system” (PEMS)** means all of the equipment necessary to monitor process and control device operational parameters

(for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

**AG. “Prevention of significant deterioration (PSD) permit”** means any permit that is issued under 20.2.74 NMAC.

**AH. “Project”** means a physical change in, or change in the method of operation of, an existing major stationary source.

**AI. “Projected actual emissions”** means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit of that regulated new source review pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(1) shall consider all relevant information, including but not limited to, historical operational data, the company’s own representations, the company’s expected business activity and the company’s highest projections of business activity, the company’s filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(2) shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit’s emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection E of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of this subsection, may elect to use the emissions unit’s potential to emit, in tons per year, as defined under Subsection AE of this section.

**AJ. “Regulated new source review pollutant”**, for purposes of this section, means the following:

(1) nitrogen oxides or any volatile

organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated; [or]

(3) any pollutant that is a constituent or precursor of a general pollutant listed in Paragraphs (1) or (2) of this subsection, provided that a constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant.

**AK. "Replacement Unit"** means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**AL. "Secondary emissions"** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

**AM. "Significant"** means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates: carbon monoxide, 100 tons per year; nitrogen oxides, 40 tons per year; sulfur dioxide, 40 tons per year; PM-10 emissions, 15 tons per year; ozone, 40 tons per year of volatile organic compounds or

nitrogen oxides; lead, 0.6 tons per year.

**(2) Notwithstanding the significant emissions rate for ozone in Paragraph (1) of Subsection AM of 20.2.79.7 NMAC, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.**

**(3) For the purposes of applying the requirements of Subsection H of 20.2.79.109 NMAC to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in Paragraphs (1), (2), and (5) of Subsection AM of 20.2.79.7 NMAC shall apply to nitrogen oxides emissions.**

**(4) Notwithstanding the significant emissions rate for carbon monoxide under Paragraph (1) of Subsection AM of 20.2.79.7 NMAC significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the U.S. environmental protection agency administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.**

**(5) Notwithstanding the significant emissions rates for ozone under Paragraphs (1) and (2) of Subsection AM of 20.2.79.7 NMAC, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act shall be considered a significant net emissions increase.**

**AN. "Significant emissions increase"** means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection AM of this section) for that pollutant.

**AO. "Stationary source"** means any building, structure, facility, or installation which emits or may emit any regulated new source review pollutant.

**AP. "Temporary source"** means a stationary source which changes its location or ceases to exist within one year from the date of initial start of operations.

**AQ. "V i s i b i l i t y**

**impairment"** means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

[11/30/95; 20.2.79.7 NMAC - Rn, 20 NMAC 2.79.107, 10/31/02; A, 1/22/06; A, 08/31/09]

**20.2.79.109 APPLICABILITY.**

**A.** Any person constructing any new major stationary source or major modification shall obtain a permit from the department in accordance with the requirements of this part prior to the start of construction or modification if either of the following conditions apply:

(1) the major stationary source or major modification will be located within a nonattainment area so designated pursuant to Section 107 of the federal Clean Air Act and will emit a regulated pollutant for which it is major and which the area is designated nonattainment for; or

(2) the major stationary source or major modification will be located within an area designated attainment or unclassifiable pursuant to Section 107 of the federal Clean Air Act and will emit a regulated pollutant for which it is major and the ambient impact of such pollutant would exceed any of the significance levels in Subsection A of 20.2.79.119 NMAC at any location that does not meet any national ambient air quality standard for the same pollutant. (See Subsection D of 20.2.79.109 NMAC.)

**B.** The requirements of this part apply to each regulated pollutant meeting the criteria of either Paragraph (1) or Paragraph (2) of Subsection A of 20.2.79.109 NMAC.

**C.** For an area which is nonattainment for ozone, volatile organic compounds and oxides of nitrogen are the regulated pollutants which may make this part applicable under the provisions of Paragraph (1) of Subsection A of 20.2.79.109 NMAC.

**D.** Other requirements.

(1) A new major stationary source or major modification which meets the criteria of Paragraph (2) of Subsection A of 20.2.79.109 NMAC shall demonstrate that the source or modification will not cause or contribute to a violation of any national ambient air quality standard by meeting the following requirements and no others of this part:

(a) Paragraph (2) of Subsection C of 20.2.79.112 NMAC regarding emission offsets;

(b) Subsection D of 20.2.79.112 NMAC regarding a net air quality benefit;

(c) 20.2.79.114 NMAC - Emission Offset Baseline;

(d) 20.2.79.115 NMAC - Emission Offset; and

(e) 20.2.79.117 NMAC - Air Quality Benefit.



(2) In addition, a new source or modification which meets the criteria of Paragraph (2) of Subsection A of 20.2.79.109 NMAC and is also a major stationary source or major modification as defined in 20.2.74 NMAC (prevention of significant deterioration (PSD)), shall obtain a PSD permit under the provisions of 20.2.74 NMAC.

**E. Applicability procedures.**

(1) Except as otherwise provided in Paragraphs (3) and (4) of this subsection, and consistent with the definition of major modification, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in Subsection AM of 20.2.79.7 NMAC), and a significant net emissions increase (as defined in Subsections Z and AM of 20.2.79.7 NMAC). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) and (4) of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions (as defined in Paragraphs (1) and (2) of Subsection E of 20.2.79.7 NMAC, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Subsection AM of 20.2.79.7 NMAC).

(4) Actual-to-potential test for projects that involve construction of a new emissions unit(s). A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Paragraph

(3) of Subsection E of 20.2.79.7 NMAC) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in Subsection AM of 20.2.79.7 NMAC).

(5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in Paragraph (3) of this subsection for the existing unit and determined using the method specified in Paragraph (4) of this subsection for the new unit.

(6) For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.2.79.120 NMAC.

**F.** The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection AI of 20.2.79.7 NMAC for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) a description of the project;  
(b) identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and

(c) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection AI of 20.2.79.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of this subsection to the department. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the department; however, necessary preconstruction

approvals and/or permits must be obtained before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified in Subparagraph (b) of Paragraph (1) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Paragraph (3) of this subsection setting out the unit's annual emissions during the year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection, by a significant amount (as defined in Subsection AM of 20.2.79.7 NMAC) for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

(a) the name, address and telephone number of the major stationary source;

(b) the annual emissions as calculated pursuant to Paragraph (3) of this subsection; and

(c) any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

**G.** The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection F of this section (20.2.79.109 NMAC) available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

**H.** The requirements

of this section (20.2.79.109 NMAC) applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the U.S. environmental protection agency administrator has granted a NO<sub>x</sub> waiver applying the standards set forth under section 182(f) of the federal Clean Air Act and the waiver continues to apply.

**I.** In meeting the emissions offset requirements of 20.2.79.115 NMAC for ozone nonattainment areas that are subject to subpart 2, part D, title I of the clean air act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(1) in any marginal nonattainment area for ozone, at least 1.1:1;

(2) in any moderate nonattainment area for ozone, at least 1.15:1;

(3) in any serious nonattainment area for ozone, at least 1.2:1;

(4) in any severe nonattainment area for ozone, at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved state implementation plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(5) in any extreme nonattainment area for ozone, at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved state implementation plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC).

**J.** Notwithstanding the requirements of Paragraph (1) of Subsection I of 20.2.79.109 NMAC for meeting the requirements of 20.2.79.115 NMAC, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to subpart 2, part D title I of the federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to subpart 2, part D, title I of the federal Clean Air Act.

**K.** Meeting the emissions offset requirements of 20.2.79.115 NMAC for ozone nonattainment areas that are subject to subpart 1, part D, title I of the clean air act, including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b), the ratio of total actual emissions increase of VOC shall be at least 1:1.

**L.** The requirements of 20.2.79.109 NMAC applicable to major stationary sources and major modifications of PM10 shall also apply to major stationary sources and major

modifications of PM10 precursors except where the U.S. environmental protection agency administrator determines that such sources do not contribute significantly to PM10 levels that exceed the PM10 ambient standards in the area.

[11/30/95; 20.2.79.109 NMAC - Rn, 20 NMAC 2.79.109, 10/31/02; A, 1/22/06; A, 08/31/09]

**20.2.79.115 EMISSIONS OFFSETS.** All emission offsets approved by the department shall meet the following criteria.

**A.** All emission reductions claimed as offset credit shall be from decreases of the same pollutant for which the offset is required.

**B.** All emission reductions claimed as offset credit shall occur prior to or concurrent with the start of operation of the proposed source. In addition, past reductions must have occurred later than the date upon which the area became nonattainment in order to be creditable.

**C.** For the case where emission reductions claimed as offset credit occur at the source subject to this part, such reductions shall be a condition required by a federally enforceable permit. For the case where emission reductions claimed as offset credit occur at a neighboring source, such reductions shall be incorporated as modifications to pertinent federally enforceable permits held by the neighboring source. If the neighboring source has no relevant permits, the reductions shall be approved as a revision to the state implementation plan by the board.

**D.** Offset credit for any emissions reduction can be claimed only to the extent that the department or U.S. EPA has not relied on it in previously issuing any permit or in demonstrating attainment or reasonable further progress.

**E.** No emissions reduction credit shall be allowed for replacing one volatile organic compound with another of lesser reactivity, except as approved by the U.S. EPA reactivity guidance found at 42 federal register 35314, (1977), and any amendments thereto.

**F.** Emission reduction credit may be allowed for a source permanently curtailing production or operating hours below baseline levels provided that the work force to be affected has been notified of the curtailment.

(1) Emissions reductions achieved by shutting down an existing [source] emission unit or curtailing production or operating hours below baseline levels may be generally credited for offsets if such reductions are permanent, quantifiable, and federally enforceable[-and if the area has an EPA-approved attainment plan]. In addition, the shutdown or curtailment is creditable

only if it occurred [on or after the date specified for this purpose in the plan, and if such date is on or] after the date of the most recent emissions inventory used in the state implementation plan's demonstration of attainment. [Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply.] However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this paragraph, a permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the date of [its most recent emissions] the base year inventory, if the projected inventory used to develop the attainment demonstration explicitly includes [as current existing emissions] the emissions from such previously shutdown or curtailed [sources] emission units.

(2) Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new [source] emission unit is a replacement for the shutdown or curtailed [source] emission unit, and the [cutoff date] provisions of Paragraph (1) of Subsection F of 20.2.79.7 NMAC are observed.

**G.** Where the most stringent emissions limit which is applicable allows greater emissions than the potential to emit of the offsetting source, emission offset credit will be allowed only for control below the potential to emit of the source.

**H.** The emission limit for determining emission offset credit involving an existing fuel combustion source shall be the most stringent emission standard which is applicable for this source for the type of fuel being burned at the time the permit application is filed. If the existing source commits to switch to a cleaner fuel, emission offset credit based on the difference between the allowable emissions of the fuels involved shall be acceptable only if an alternative control measure, which would achieve the same degree of emission reduction should the source switch back to a fuel which produces more pollution, is specified in a permit issued by the department.

**I.** The owner or operator desiring to utilize an emission reduction as an offset shall submit to the department the following information:

(1) a detailed description of the process to be controlled and the control technology to be used; and

(2) emission calculations showing the types and amounts of actual emissions to be reduced; and

(3) the effective date of the reduction.

**J.** Source shutdowns and

curtailments in production or operating hours may be used for emission offset credit only if they occur after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source for which the offset is to apply is a replacement for the shutdown or curtailment.

**K.** The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

[11/30/95; 20.2.79.115 NMAC - Rn, 20 NMAC 2.79.115, 10/31/02; A, 1/22/06; A, 08/31/09]

## NEW MEXICO HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

**This is an amendment to 8.50.109 NMAC, Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 effective 8/14/09.**

**8.50.109.6 OBJECTIVE:** To conform the regulations with changes made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) [and], the Child Support Performance and Incentive Act of 1998, and the Deficit Reduction Act of 2005. The regulations [here] herein codify present practices in accordance with federal and state law and regulations.

[8.50.109.6 NMAC - Rp 8 NMAC 5.CSE.000.6, 5/31/01; A, 10/1/03; A, 8/14/09]

**8.50.109.7 DEFINITIONS:** The following definitions apply to this part. Additional definitions may be found under child support enforcement program general provisions at 8.50.100.7 NMAC.

**A. "Cash medical support"** means an amount ordered to be paid toward the cost of health insurance provided by a public entity (medicaid) or for other medical costs for minor child(ren) not covered by insurance.

**[A:] B. "Health [care] insurance plan" or "plan"** means health [care] insurance coverage, not including medicaid, generally associated with a [medical or dental] medical, dental or vision plan of benefits, whether it be an employment-related or other group health plan, a health maintenance organization, a non-profit health plan, or any other type of health insurance coverage under which medical or dental services are provided,

regardless of service delivery mechanism. Any health [care] insurance plan coverage of a minor child shall, at a minimum, meet the standards of minimum health care protection as defined in the New Mexico Insurance Code, Section 59A-23B NMSA 1978.

**C. "Medical support"** means cash medical support, health care insurance, dental insurance, vision insurance, or a percentage split between the custodial party and the non-custodial parent for uncovered medical bills for children.

**[B:] D. "National medical support notice" or "notice"** means a qualified [court-ordered] notice pursuant to a court order sent to an employer stating that an employee's children must be covered by the employment-related health care insurance plan.

[8.50.109.7 NMAC - N, 10/1/03; A, 8/14/09]

### **8.50.109.8 ESTABLISHMENT OF MEDICAL SUPPORT:**

All orders obtained by the IV-D agency must include a provision for [the health care coverage of] medical support for the children. For the purposes of the IV-D program reporting, medical support includes any one of the following: private health insurance coverage (health, dental, or vision), coverage through Indian health services (IHS), state children's health insurance program (SCHIP), or the defense enrollment eligibility reporting services (DEERS), cash medical support, or a percentage split of uncovered medical expenses for the minor children. If the children are covered by IHS, the IV-D agency will request that private health insurance be provided by either or both parents, when available. If the non-custodial parent provides health [care] insurance coverage and changes employment, and the new employer provides health [care] insurance coverage, the IV-D agency must transfer notice of the provision to the new employer. The IV-D agency must request the inclusion of a medical support provision even when employment-related or other group health [care] insurance is not available or when children cannot be added at the time the order is entered. The IV-D agency shall request the provision of cash medical support only if the case is actively enrolled in Title XIX medicaid at the time medical support is established or modified. The cost of health insurance is [considered reasonable if it is employment-related or other group health care insurance, regardless of service delivery mechanism] calculated by determining the amount charged to the medical support obligor for adding children to the existing coverage, or the difference between individual and family coverage. The reasonableness of the cost of the insurance will be determined by stipulation of the parties or by the court. The IV-D agency may request the provision of health

insurance coverage by either or both the custodial party and the non-custodial parent and that the parties should be responsible for any uncovered medical expenses in proportion to their incomes on the current child support worksheet. If the court does not enter an order for medical support, the IV-D case record must reflect that a provision for medical support [order] was requested but was not issued.

[8.50.109.8 NMAC - Rp 8 NMAC 5.CSE.830, 5/31/01; A, 10/1/03; A, 8/14/09]

### **8.50.109.9 TIME FRAMES AND REQUIREMENTS:**

For all referral cases, within ninety calendar days of locating a non-custodial parent or of establishing paternity, child [and/or] or medical support orders must be established or service of process must be completed to establish a support order. If service of process [could] can not be completed, then the case record must reflect unsuccessful attempts to serve process. If the court dismisses a petition for support order without prejudice, the office must, at the time of dismissal, examine the reasons for dismissal and determine when it could be appropriate to seek an order in the future and seek a support order at that time.

[8.50.109.9 NMAC - Rp 8 NMAC 5.CSE.831, 5/31/01; A, 10/1/03; A, 8/14/09]

### **8.50.109.10 AVAILABILITY OF MEDICAL INSURANCE:**

Medical support will be addressed in actions to establish, enforce, or modify a child support award for minor children. All support orders obtained or modified by the IV-D agency will include a provision requiring either or both custodial party and the non-custodial parent to promptly inform the IV-D agency of the name and address of [his or her current employer] their current employers, whether either the custodial party or the non-custodial parent has access to health [care] insurance coverage and, if so, the health insurance policy information.

A. The non-custodial parent may be required to provide immediate [health or dental] health, dental, or vision insurance coverage for the minor children if insurance (not including Title XIX medicaid) is not available to the custodial [parent] party at a more reasonable cost than to the non-custodial parent for coverage of the minor child; and it is available to the non-custodial parent through an employment-related or other group health [care] insurance plan, regardless of service delivery mechanism, which may be a labor organization, union, non-profit organization or professional association.

B. If medical insurance is not available to the non-custodial parent through an employment-related or other group health [care] insurance plan, and health insurance is not being provided

by the custodial parent, the non-custodial [parent] party may be required to provide immediate health insurance coverage for the children when it becomes available through an employment-related or other group health [care] insurance plan.

C. Failure by a non-custodial parent to provide [health insurance coverage] medical support for the minor children, and to provide information concerning [the] health insurance coverage, will subject the non-custodial parent to legal proceedings requiring the non-custodial parent to show cause as to why the non-custodial parent should not be held in contempt of court for failure to fulfill the requirements of the court order. This will be true even if medical support is the only area in which the non-custodial parent is not in compliance with the terms of the order.

~~[D. Medical insurance is reasonable in cost if employment-related or available through a group health care insurance plan, which may include but is not limited to a union, labor organization, non-profit organization or professional association. Only the court may determine appropriateness of premium cost for a parent.]~~

[8.50.109.10 NMAC - Rp 8 NMAC 5.CSE.832, 5/31/01; A, 10/1/03; A, 8/14/09]

#### **8.50.109.11 PROVIDING CUSTODIAL PARENTS WITH MEDICAL INSURANCE INFORMATION:**

If the non-custodial parent is responsible for providing health insurance coverage, the IV-D agency will provide the custodial [parent] party with available health [care] insurance plan information when the non-custodial parent secures coverage for the dependent children. This includes any information available to the IV-D agency about the health [care] insurance plan that would permit a claim to be filed or services to be provided. In cases enforced by the national medical support notice, the health [care] insurance plan shall provide this information to the custodial [parent] party and the IV-D agency, as outlined on the notice.

[8.50.109.11 NMAC - Rp 8 NMAC 5.CSE.831, 5/31/01; A, 10/1/03; A, 8/14/09]

#### **8.50.109.12 MONITORING AND ENFORCING COVERAGE:**

In all cases in which there is a court order with no medical [insurance coverage] support ordered, the case will be reviewed pursuant to the IV-D agency's plan for automatic review of all IV-D cases every three years. Even if no other modification is expected, the IV-D agency must seek modification to include medical support, except in non-IV-A non-medicaid cases where the custodial [parent] party has not consented to the IV-D agency obtaining medical support. All remedies

available for the collection and enforcement of child support apply to medical support. In cases where the non-custodial parent is required to provide health [care] insurance coverage through an employment-related or other group health insurance plan pursuant to a child support order, the IV-D agency shall use, where appropriate, the national medical support notice to enforce the provisions of health [care] insurance coverage for the children.

A. The IV-D agency must use the notice, when appropriate, to notify employers of the provision for health [care] insurance coverage of the children. The agency must transfer the notice to the employer within two business days after the date of entry of an employee who is an obligor in a IV-D case in the state directory of new hires.

B. Employers must transfer the notice to the appropriate group health [care] insurance plan for which the children are eligible within twenty business days after the date of the notice.

C. Employers must withhold any obligation of the employee for employee contributions necessary for coverage of the children and send any amount withheld directly to the health [care] insurance plan. Employees may contest the withholding based on a mistake of fact. If the employee contests such withholding, the employer must proceed with withholding until such time as the employer receives notice from the IV-D agency that the contest is resolved.

D. Upon receipt of the national medical support notice, the health [care] insurance plan shall enroll the obligor's children as eligible dependents. Except as specifically outlined on the notice, the health [care] insurance plan shall not be required to provide benefits or eligibility for such benefits in addition to those provided under the terms of the plan immediately before receipt of the notice.

E. If the obligor is enrolled in a plan, the children shall be enrolled in the same plan in which the obligor is enrolled. If the obligor is not enrolled in a plan, the premiums charged for enrollment of the children only shall be the same as would be charged for enrollment of the obligor only. If the obligor is not enrolled in a plan and there is more than one plan option available for enrollment of the children, the plan shall notify the IV-D agency and the agency, in consultation with the custodial [parent] party, will select a plan option. If the custodial [parent] party does not notify the agency of the selected plan option within the timeframe required by the agency, the children shall be enrolled in the plan's default option, which is defined as the least costly plan that conforms with the minimum health care protection as defined in the New Mexico Insurance Code,

Section 59A-23B-1 et seq NMSA 1978.

F. The health [care] insurance plan must notify the IV-D agency of the status of health [care] insurance coverage for the children, as outlined on the notice, within forty days after the date of the notice. The plan shall also promptly notify the custodial [parent] party of the plan coverage and effective date, as outlined on the notice.

G. Employers must notify the IV-D agency promptly whenever the obligor's employment is terminated, in the same manner as is required for income withholding cases.

H. The IV-D agency must promptly notify the employer when there is no longer a current order for medical support in effect for which the IV-D agency is responsible.

[8.50.109.12 NMAC - Rp 8 NMAC 5.CSE.832.2, 5/31/01; A, 10/1/03; A, 8/14/09]

#### **8.50.109.13 MEDICAL [INSURANCE CARRIED] SUPPORT PROVIDED BY THE CUSTODIAL PARENT PARTY:**

In cases where the custodial [parent] party has satisfactory medical insurance for the minor children other than medicaid, the amount expended by the custodial [parent] party for health insurance will be taken into account pursuant to the New Mexico child support guidelines worksheet that will be attached to the order. The IV-D agency will not enforce court ordered medical support against a custodial party.

[8.50.109.13 NMAC - Rp 8 NMAC 5.CSE.832.3, 5/31/01; A, 10/1/03; A, 8/14/09]

#### **8.50.109.14 COMMUNICATION WITH THE MEDICAL ASSISTANCE DIVISION:**

The IV-D agency is required to relay information regarding private [health and dental] health, dental, or vision insurance to the medical assistance division. This information includes newly obtained coverage, changes in coverage, or coverage lapses. The IV-D agency must report to the medical assistance division any medical support payments made directly to the custodial party if there is an assignment of medical support pursuant to 42 CFR 433.146. The IV-D agency in cooperation with the medical assistance division will communicate to determine if there are any lapses in health insurance coverage for medicaid applicant/recipient.

[8.50.109.14 NMAC - Rp 8 NMAC 5.CSE.832.4, 5/31/01; A, 8/14/09]

#### **8.50.109.15 ORDERING SPECIFIC DOLLAR AMOUNTS FOR MEDICAL SUPPORT:**

[Specific dollar amounts received for medical support must

be sent to the medical assistance division (MAD) for distribution when the case receives medicaid (IV-A, or medicaid only). When the family ceases to receive medicaid, assignment for medical benefits terminates, except for the amounts of any unpaid medical support obligation that has accrued under the assignment, the IV-D agency will attempt to collect any unpaid dollar amounts designated in the court order for medical purposes and must forward the collection to the medical assistance division for distribution. The order may include a set amount and specify that the amount set is for medical care. The court order should include a set amount and specify that the amount is designated for cash medical support, when, for example, there is no private health insurance available. This amount should be in addition to and not in lieu of the non-custodial parent's obligation to pay a percentage of unreimbursed medical expenses. Either the custodial party or the non-custodial parent may request the court to order the provision of cash medical support. The IV-D agency will request the provision of cash medical support only if the children are actively enrolled in Title XIX medicaid at the time medical support is established or modified. The IV-D agency will enforce a provision for cash medical support established or modified by any party so long as the court order designates a specific dollar amount to be paid in regular, equal installments (i.e. monthly, bi-weekly, weekly). If the order does not designate a specific dollar amount for medical purposes, the agency is not required to collect the money. For example, if the non-custodial parent is ordered to pay for the child's orthodontia, but no dollar amount is ordered, the IV-D agency [is not required to] will not enforce this component of the order.

[8.50.109.15 NMAC - Rp 8 NMAC 5.CSE.832.5, 5/31/01; A, 10/1/03; A, 8/14/09]

**8.50.109.16 [PENALTIES:** If any person willfully fails to withhold or pay over income to the health care insurance plan pursuant to the national medical support notice, Mandatory Medical Support Act, or Support Enforcement Act, or willfully discharges, disciplines, refuses to hire or otherwise penalizes an obligor as prohibited by Subsection D of Section 40-4A-8 NMSA 1978, the court, upon due notice and hearing:

A. may impose a fine against the payor for the total amount that the payor willfully failed to withhold or pay over;

B. may order reinstatement of or award damages, or both, to the obligor;

C. may take such other action, including action for contempt of court, as may be appropriate.]

**DISTRIBUTION OF MEDICAL SUPPORT:** The IV-D agency collects

and distributes cash medical support and payments toward medical support judgments. Specific dollar amounts received for medical support must be sent to the medical assistance division for distribution when the case receives medicaid (Title XIX). When the case ceases to receive medicaid, the assignment of medical support terminates, except for amounts of any unpaid medical support obligations that accrued under the assignment. The IV-D agency will attempt to collect any unpaid dollar amounts designated in the court order for medical support and must forward the collection to the medical assistance division for distribution. Medical support is distributed directly to the custodial party if the family is not currently receiving or has never received medicaid.

[8.50.109.16 NMAC - N, 10/1/03; Repealed, 8/14/09; 8.50.109.16 NMAC - N, 8/14/09]

**8.50.109.17 FEES:** In IV-D cases being enforced for medical support pursuant to the requirements of the national medical support notice, an employer may not assess a fee for withholding or for sending to the health [eare] insurance plan, the employee contributions necessary for health [eare] insurance coverage of the children.

[8.50.109.17 NMAC - N, 10/1/03; A, 8/14/09]

## NEW MEXICO HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

**This is an amendment to 8.50.125 NMAC,  
Section 11, effective 8/14/09.**

### **8.50.125.11 DISTRIBUTION OF COLLECTIONS (EXCEPT FOR FEDERAL INCOME TAX REFUND OFFSETS):**

A. In accordance with federal regulations, for purposes of distribution in a IV-D case, amounts collected, except for amounts collected through federal income tax refund offset, must be distributed as follows:

(1) current support (monthly payment ordered for current support);

(2) past due support (monthly payment on judgment);

(3) current support arrears;

(4) past due support arrears;

(5) in each of the categories above, the payment is prioritized in the following order: child support, medical support, spousal support; any payment that is insufficient to meet the entire obligation will be applied in the order stated above.

B. The requirement to apply collections first to satisfy the current support obligation is critical in all IV-D cases

to ensure that payment records are consistent in interstate cases, regardless of whether the amount applied to current support is paid to the family (as in a former assistance case) or retained by the state to recover unreimbursed assistance in a current assistance case.

C. Current assistance cases: The state will (not exceeding the cumulative amount of unreimbursed assistance paid to the family):

(1) pay to the federal government the federal share of the entire amount collected;

(2) retain the state share of the amount collected; and

(3) reduce the cumulative amount of unreimbursed assistance by the total amount collected and disbursed under (1) and (2), and distribute collections exceeding the cumulative amount of unreimbursed assistance to the family.

D. Federal statute does not specify the order in which collections are applied to satisfy assigned arrearages in current assistance cases. The state of New Mexico has selected the following option:

(1) collections will be first applied to temporarily assigned arrearages; and

(2) additional collections will be applied to permanently assigned arrearages.

E. At the discretion of the New Mexico legislature, the IV-D agency may, on a monthly basis, disburse to the IV-A service recipient a specified amount from collections on current support.

F. Former assistance cases: For collections made prior to October 1, 1998 (other than through federal income tax refund offset), the state shall:

(1) first, distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;

(2) second, distribute any amount above the current monthly support obligation to arrearages owed to the family or assigned to the state; the federal statute does not specify the order in which collections are applied to satisfy arrearages; the state must have procedures which specify the order in which assigned arrearages will be satisfied; if the state distributes any amount to assigned arrearages, the state must pay to the federal government the federal share of the amount so collected; the state must retain the state share of the amount so collected, with one exception; the state may retain or pay to the family the state share of collections applied to arrearages which accrued while the family was receiving assistance after October 1, 1996.

G. For collections made on or after October 1, 1998, or earlier at state option (other than collections through federal income tax refund offset), the state shall:

(1) distribute the amount collected

to satisfy the current monthly support obligation and pay that amount to the family;

(2) distribute any amount above the current monthly support obligation to satisfy never-assigned arrearages and pay that amount to the family;

(3) distribute any amount above amounts distributed in (1) and (2) to satisfy unassigned pre-assistance arrearages and conditionally-assigned arrearages and pay that amount to the family.

(4) distribute any amount above amounts distributed in (1), (2) and (3) to satisfy permanently-assigned arrearages; the state must pay the federal government the federal share of the amount so collected; the state must retain the state share of the amount so collected with one exception; the state may retain or pay to the family the state share of collections applied to arrearages that accrued while the family was receiving assistance after October 1, 1996;

(5) reduce the cumulative amount of unreimbursed assistance by the total amount distributed under (4), distribute collections exceeding the cumulative amount of unreimbursed assistance to satisfy unassigned during-assistance arrearages and pay those amounts to the family.

H. Never-assistance cases: All support collections in never-assistance cases must be paid to the family.

I. No collections of funds will be sent to third parties, attorneys, or agents, except in cases where there is a court order directing the support payment(s) to a person or entity other than the custodial party.

[8.50.125.11 NMAC - Rp 8 NMAC 5.CSE.802, 5/31/01; A, 8/15/08; A, 8/14/09]

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
CHILD SUPPORT ENFORCEMENT  
DIVISION**

**This is an amendment to 8.50.129 NMAC, Sections 6, 9, 12, effective 8/14/09.**

**8.50.129.6 OBJECTIVE:** [~~For repeal all existing regulations for the child support enforcement division filed at state records as 8 NMAC 5 CSE - 000.000 through 979.000 and to replace the existing regulations with new regulations and conform the regulations with changes made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA):~~] The regulations here codify present practices in accordance with federal and state [law] laws and regulations.

[8.50.129.6 NMAC - Rp 8 NMAC 5.CSE.000.6, 5/31/01; A, 08/14/09]

**8.50.129.9 R E T E N T I O N OF RECORDS:** [~~All financial and~~

~~programmatic records, supporting documents, statistical records, and other records of receipts will be retained for twenty years from the close of the federal fiscal year in which the case was closed.]~~ Records will be retained in accordance with the state's retention schedule for the human services department at 1.18.630 NMAC. [8.50.129.9 NMAC - Rp 8 NMAC 5.CSE.150, 5/31/01; A, 08/14/09]

**8.50.129.12 CLOSURES:**

A. Federal regulations specify the policy reasons permitted for closure of child support or medical support. In cases meeting the closure criteria in paragraphs (1) through (6) and (10) through (12) of the following section, the state must notify the recipient of services, or in an interstate case meeting the criteria for closure under (12), the initiating state, in writing, sixty calendar days prior to closure of the case of the state's intent to close the case.

B. The case must be kept open if the recipient of services or the initiating state supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order, or, in the instance of paragraph (10) of the following section, if contact is reestablished with the recipient of services. If the case is closed, the former recipient of services may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order by completing a new application for IV-D services. The IV-D agency must retain all records for cases closed pursuant to this section for a minimum of three years.

C. Case closure criteria: The following case criteria may be met for closure for child or medical support cases.

(1) There is no longer a current child support order and arrearages are under \$500, or the order is unenforceable under state law.

(2) The non-custodial parent or putative father is deceased and no further action, including a levy against the estate, may be taken.

(3) Paternity cannot be established because:

(a) the child is a least eighteen years old and action to establish paternity is barred by a statute of limitations;

(b) a genetic test or court or administrative process has excluded the putative father and no other putative father can be identified;

(c) IV-D agency has determined that it would not be in the best interest of the child to establish paternity in a case involving incest or forcible rape, or in any case where legal proceedings for adoption

are pending;

(d) the identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the IV-D agency with the recipient of services.

(4) The non-custodial parent's location is unknown, and the state has made diligent efforts using multiple sources, in accordance with federal location requirements, all of which have been unsuccessful, to locate the non-custodial parent:

(a) over a three-year period when there is sufficient information to initiate an automated locate effort, or

(b) over a one-year period when there is not sufficient information to initiate an automated locate effort.

(5) The non-custodial parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evident of support potential. The IV-D agency must also determine that no income or assets are available to the non-custodial parent which could be levied or attached for support.

(6) The non-custodial parent is a citizen of, and lives in, a foreign country, does not work for the federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets; and the state has been unable to establish reciprocity with the country.

(7) The agency has provided parent locate only services as requested.

(8) [~~The non-IV-A custodial parent requests closure of the case, in writing, and there is no assignment to the state of medical support or arrearages which accrued under a support order:]~~ The custodial party is no longer active TANF and requests closure of the case, in writing, and there is no assignment of state arrears or medical support.

(9) There has been a finding by the responsible state agency of good cause or other exceptions to cooperation with the IV-D agency and the state or local IV-A, IV-D, IV-E, medicaid or food stamp agency has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative.

(10) In a non-IV-A case, the IV-D agency is unable to contact the recipient of services within a sixty calendar day period despite an attempt of at least one letter sent by first class mail to the last known address. [NOTE: ~~This excludes medicaid only cases. The medicaid only custodial parent may request closure of child support services but medical support services are mandatory. As in the case of an uncooperative IV-A~~

recipient, the IV-D agency may not close the IV-D case because the medicaid only applicant/recipient is uncooperative in establishing paternity.]

(11) In a non-IV-A case, the office documents the circumstances of the custodial parent's non-cooperation and an action by the custodial parent is essential for the next step in providing services.

(12) The IV-D agency documents failure by the initiating state to take an action which is essential for the next step in providing services.

(13) The IV-D case was opened in error.

[8.50.129.12 NMAC - Rp 8 NMAC 5.CSE.892, 5/31/01; A, 08/14/09]

**NEW MEXICO HUMAN SERVICES DEPARTMENT**  
**INCOME SUPPORT DIVISION**

**This is an amendment to 8.102.500 sections 8 and 10; effective 08/14/2009.**

**8.102.500.8 GENERAL REQUIREMENTS:**

**A. Need determination process:** Eligibility for NMW and EWP cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1500 liquid and \$2000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

**B. Gross income limits:** The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

- (a) one person \$ 737
- (b) two persons \$ 992
- (c) three persons \$1,247
- (d) four persons \$1,502
- (e) five persons \$1,757
- (f) six persons \$2,012
- (g) seven persons \$2,267
- (h) eight persons \$2,522

(i) add \$255 for each additional person.

**C. Eligibility for support services only:** Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than 100% of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

- (1) one person \$ 867
- (2) two persons \$1,167
- (3) three persons \$1,467
- (4) four persons \$1,767
- (5) five persons \$2,067
- (6) six persons \$2,367
- (7) seven persons \$2,667
- (8) eight persons \$2,967
- (9) add \$300 for each additional

person.

**D. Standard of need:**

(1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately \$91 per month for each participant in the benefit group.

(4) The standard of need for the NMW, and EWP cash assistance benefit group is:

- (a) one person \$ 266
- (b) two persons \$ 357
- (c) three persons \$ 447
- (d) four persons \$ 539
- (e) five persons \$ 630
- (f) six persons \$ 721
- (g) seven persons \$ 812
- (h) eight persons \$ 922
- (i) add \$91 for each additional

person.

**E. Special needs:**

(1) **Special clothing allowance:** In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100 for the months of August and January subject to the availability of state or federal funds.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, or EWP cash assistance benefit group for the months of August and January subject to the availability of state or federal funds.

(c) The clothing allowance is not allowed in determining eligibility for NMW,

TBP or EWP cash assistance.

(2) **Layette:** A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) **Special circumstance:** Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

**F. Non-inclusion of legal guardian in benefit group:** Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group.

[8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009]

**8.102.500.10 DIVERSION PAYMENTS TO A NMW BENEFIT GROUP:**

**A. Purpose:** The diversion payment is a one time cash assistance payment, that is intended to assist the benefit group alleviate a specific short-term need: to accept a bona fide offer of employment, retain employment, remedy an emergency situation or an unexpected short-term need.

**B. Eligibility criteria:**

(1) **Applicant:** Eligibility for a diversion payment shall be limited to an applicant making an initial application for cash assistance. Initial application shall not include a NMW cash assistance case which is within a six-month mandatory closure because of a third sanction. For the purposes of diversion payments, an initial applicant is one who has never received cash assistance, or one whose cash assistance case has been closed for one or more calendar months.

(a) An applicant for NMW cash assistance who meets all NMW eligibility criteria may volunteer to accept a NMW diversion payment in lieu of monthly cash assistance payments if there is no need for long-term cash assistance to meet basic needs.

(b) The caseworker shall explain the diversion program is not a supplement to other assistance but is in place of it and screen the applicant for eligibility for a diversion payment.

(c) Final approval for all diversion payments shall be made by the county

director and documentation submitted to income support division central office.

**(2) NMW eligibility is established:**

**(a)** The applicant must be otherwise eligible for NMW cash assistance, except that the applicant demonstrates that monthly cash assistance to meet basic needs is not required by the benefit group because there is a means of on-going financial support, and the applicant chooses to accept a diversion payment in lieu of cash assistance to meet ongoing needs.

**(b)** An applicant who cannot demonstrate that monthly cash assistance to meet basic needs is not needed shall not be eligible for a diversion payment.

**(3) Specific need:** The applicant must make an informed choice whether cash assistance is needed to meet a specific short term need. The applicant may demonstrate a need for a specific item or type of assistance which will allow the applicant to keep a job or accept a bona fide offer of employment, remedy and emergency situation or alleviate a short term need. Such assistance may include, cash, support services, housing, transportation, car repairs, and uniforms.

**(4) Eligibility for support services:** A recipient of a diversion payment shall remain eligible for support services such as child care and transportation until the end of the 12-month lock-out period, until closure of the case is requested or the participant moves out of state. A referral to the NMW work program service provider and to CYFD shall be made after the applicant signs the agreement to accept a diversion payment and payment is authorized.

**(5) Verification and documentation:**

**(a)** The applicant shall be required to provide verification of the specific item or type of assistance which will allow the applicant to meet the basic short-term need.

**(b)** Documentation shall be required to establish that a diversion payment may be authorized in lieu of cash assistance to meet ongoing needs. An agreement signed by the applicant shall include a description of a diversion payment, terms and conditions, lifetime limitations, availability of work program services, reason for accepting a diversion payment, any prior assistance received in or out of the state.

**C. Amounts:** Diversion assistance is a one time, lump sum payment. The amount of the diversion payment is as follows:

**(1) one to three benefit group members:** may be entitled to an amount of up to \$1,500 non-recurring payment; or

**(2) four or more benefit group members:** may be entitled to an amount of up to \$2,500 non-recurring payment.

**D. Countable assistance:** The effects a diversion payment on other

categories of assistance is as follows:

**(1)** the receipt of a diversion payment shall be excluded from income considerations in the medicaid program; and

**(2)** categorical eligibility is extended to the food stamp benefit group for the lockout period, unless the benefit group requests closure or moves out of New Mexico; and

**(3)** an applicant who accepts a diversion payment shall be eligible for TANF funded child care assistance for the lockout period, unless the benefit group requests closure or moves out of New Mexico.

**E. Limitations and conditions:** An applicant may receive a diversion payment a maximum of two times during a participant's 60-month term limit.

**(1)** Receipt of a diversion payment does not count toward the NMW 60-month term limit for any adult included in the benefit group, unless the benefit group also receives monthly NMW cash assistance during the period covered by the diversion payment.

**(2)** The acceptance of a diversion payment does not reduce the number of months in a participant's 60-month lifetime limit; however, a diversion payment can only be authorized a maximum of two times during the 60-month lifetime limit. The 60-month lifetime limit began on July 1, 1997 for any adult or minor head of the benefit group, or spouse of the minor, who received TANF since July 1997.

**(3)** A participant who has reached the 60-month lifetime limit is not eligible for a diversion payment. A participant who has never received a month of TANF is eligible for a diversion payment.

**(4) Cash assistance lockout period:**

**(a) Acceptance of a diversion payment:** An applicant who accepts a diversion payment shall be prohibited from participating in the NMW cash assistance program for a period of 12 months beginning in the month the diversion payment is authorized. A written agreement that defines the terms and expectations of the diversion grant; documents the reason why cash assistance to meet basic needs is not required; identifies the need for a specific type of short-term assistance; and describes the support services available to diversion participants must be signed by the participant.

**(b) Receipt of a diversion payment from another state:** An applicant who has accepted a diversion payment in any other state shall be prohibited from receiving NMW cash assistance or a diversion payment in New Mexico for a period of 12 months, beginning in the month the diversion payment in the other state was authorized, or for the length of the lockout period in the other state, whichever is shorter.

**(5)** A participant of a diversion payment is not required to comply with work program or child support enforcement requirements.

**F. Re-application:** A participant may apply for cash assistance during the lockout period based on the following criteria.

**(1) Applying during lock-out period:** An applicant who determines an inability to adhere to the terms and conditions for receipt of a diversion payment may apply for cash assistance to meet ongoing basic needs.

**(a)** An applicant is ineligible for cash assistance payment regardless of good cause within the first four months of receiving a diversion payment.

**(b)** An applicant is eligible for cash assistance payment if good cause is met at least five months after receipt of diversion payment.

**(2) Good cause:** Good cause must apply in order for an applicant to re-apply for cash assistance during the lockout period. Good cause can only be considered for applicants applying at least five months after initial receipt of a diversion payment. Good cause is not considered to exist for the first four months from initial receipt of a diversion payment. Good cause must be approved by IRU and may include, loss of employment, but not a voluntary quit; catastrophic illness or accident of a family member which requires an employed participant to leave employment; a victim of domestic violence; or another situation or emergency that renders an employed family member unable to care for the basic needs of the family.

**G. Claims:**

**(1)** A benefit group that receives monthly cash assistance within the 12-month lock out period shall not be subject to an overpayment if the household meets good cause.

**(2)** A benefit group may be subject to an overpayment if the diversion payment was issued in error and subject to recoupment as specified in 8.102.640 NMAC.

[8.102.500.10 NMAC - Rp 8.102.500.10 NMAC, 07/01/2001; Repealed, 7/17/2006; 8.102.500.10 NMAC - N, 11/15/2007; A, 08/14/2009]



**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
INCOME SUPPORT DIVISION**

**This is an amendment to 8.102.501 sections 3, 6, 8, 9, 10 and 11; effective 08/14/2009. The part name is also amended.**

**PART 501 [EMPLOYMENT  
RETENTION BONUS PROGRAM]  
TRANSITION BONUS PROGRAM**

**8.102.501.3 S T A T U T O R Y  
AUTHORITY:**

**A.** New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

**B.** Federal legislation contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 abolished the AFDC program. The federal act created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998 (NMW), the New Mexico works program was created to replace the aid to families with dependent children program.

**C.** Under authority granted to the governor by the federal Social Security Act, the human services department is designated as the state agency responsible for the TANF program in New Mexico.

**D.** Effective April 1, 1998, in accordance with the requirements of the New Mexico Works Act and title IV-A of the federal Social Security Act, the department is creating the New Mexico works program as one of its financial assistance programs.

**E.** Effective July 1, 2008, in accordance with the requirements of the New Mexico Works Act, the department is creating the ~~[Employment Retention Bonus (ERB) Program]~~ Transition Bonus Program (TBP) as one of its financial assistance programs.

**F.** In close coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at title 7, code of federal regulations. [8.102.501.3 NMAC - N, 07/01/2008; A, 08/14/2009]

**8.102.501.6 OBJECTIVE:**

**A.** The purpose NMW program is to improve the quality of life for parents and children by increasing family income, resources and support. The further purpose of the program is to increase family

income through family employment, child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment.

**B.** The objective of the education works program (EWP) is to provide cash assistance to a benefit group where at least one individual is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or participant benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

**C.** The objective of the ~~[ERB program]~~ TBP is to provide for a limited duration and a fixed monthly cash assistance bonus incentive to encourage NMW families to leave NMW cash assistance and participate in the ~~[ERB program]~~ TBP by maintaining a certain number of hours in paid employment and leave the ~~[ERB program]~~ TBP due to increased earnings.

[8.102.501.6 NMAC - N, 7/01/2008; A, 08/14/2009]

**8.102.501.8 [EMPLOYMENT  
RETENTION BONUS PROGRAM]  
TRANSITION BONUS PROGRAM:**

**A. Purpose:** The ~~[ERB program]~~ TBP provides a limited duration and fixed month cash assistance bonus incentive to encourage NMW families to leave NMW cash assistance, participate in the ~~[ERB program]~~ TBP by maintain a certain number of hours in paid employment and leave the ~~[ERB program]~~ TBP due to increased earnings. This program also provides supportive services on an ongoing basis, provided that the participant is eligible to receive the services during the months provided.

**B. Method of payment:** ~~[ERB]~~ TBP payments are paid by issuing funds into an electronic benefits transfer (EBT) account accessible to the participant. In some circumstances benefits may be issued by warrant.

**C. Fixed benefit amount:** A non-prorated, ~~[fixed]~~ benefit amount of \$200.00 will be given to all ~~[ERB program]~~ TBP participants under 150% of federal poverty guidelines. The benefit can ~~[only]~~ be reduced to recoup an existing ~~[ERB]~~ cash assistance overpayment in accordance with 8.102.640 NMAC. The benefit will be countable for the benefit group's eligibility for food stamp and medicaid benefits unless otherwise excluded.

**D. Lifetime limits:**

(1) The ~~[ERB]~~ TBP benefit shall not be provided to an adult, minor head of household or the spouse of a minor head of household for more than 18 months during the individual's lifetime. A benefit group as defined at 8.102.400 NMAC shall be

ineligible if the benefit group contains at least one adult, minor head of household or spouse of the minor head of household who has received 18 or more months of the ~~[ERB]~~ TBP benefit.

(2) Any month in which an adult, a minor head of household, or the spouse of a minor head of household, has received full or partial ~~[ERB]~~ TBP benefit shall be considered a month of receipt and shall be counted towards the 18 month lifetime limit for any benefit group in which that individual is a member.

(3) Participants who have received less than or equal to 30 months of NMW and are approved for the ~~[ERB]~~ TBP program shall have each month of receipt of the ~~[ERB]~~ TBP benefit count toward the 60 month lifetime limit for NMW eligibility until the 30th month is received.

(4) Participants who have received more than or equal to 31 months and up to 60 months of NMW and are approved for the ~~[ERB]~~ TBP program shall not have each month of receipt of the ~~[ERB]~~ TBP count toward the 60 month lifetime limit for NMW eligibility.

**E. Initial eligibility:**

(1) The ~~[ERB]~~ TBP program shall be subject to all federal and state NMW cash assistance application, eligibility, certification and reporting requirements, except where specified within the ~~[ERB program]~~ TBP regulations. Resources of the budget group are excluded in determining eligibility for the ~~[ERB program]~~ TBP.

(2) **Application requirements:** Active NMW benefit groups that meet the qualifications and eligibility requirements for the ~~[ERB program]~~ TBP shall be eligible without an application. An application will be required if the NMW case is closed.

(3) The ~~[ERB program]~~ TBP shall be available only to a benefit group that meets all of the following criteria:

(a) does not simultaneously participate in the NMW program;

(b) has left the NMW cash assistance program;

(c) meets all ~~[ERB program]~~ TBP requirements and voluntarily chooses to participate in the program;

(d) is currently engaged in paid unsubsidized or subsidized employment, except for subsidized employment funded with TANF, for a minimum of 30 hours per week, and averaged over a month;

(e) has gross income that does not exceed 150% of federal poverty guidelines;

(f) has received NMW funded cash assistance for at least three months and one of the last three months; and

(g) does not include an adult, minor head of household or spouse of the minor head of household that participated in the ~~[ERB program]~~ TBP for 18 months in their lifetime ~~[and]~~ or 60 months of TANF.

(4) Eligibility for the [ERB program] TBP shall be prospective for a six month period up to a lifetime limit of 18 months [of ERB benefits].

F. In accordance with Subsection B of 8.102.500.8 NMAC, income eligibility limits for the [ERB program] TBP will be revised and adjusted each year in October.

[8.102.501.8 NMAC - N, 07/01/2008; A, 08/14/2009]

#### 8.102.501.9 CONTINUED ELIGIBILITY:

A. **Six month reporting requirement:** All benefit groups participating in the [ERB program] TBP shall be assigned to a six month reporting requirement. A benefit group assigned to a six month reporting shall be required to file a six month report no later than the tenth day of the sixth month or in conjunction with the food stamp semiannual report, whichever is appropriate. The benefit group must include the following information along with verification:

(1) any change in benefit group composition, whether a member has moved in or out of the home along with the date, the change took place;

(2) the amount of money received from employment by each benefit group member;

(3) the amount of unearned income received by each benefit group member;

(4) verification for residence, only if, there has been a change in residence since the last certification;

(5) changes in child support receipt; and

(6) changes in alien status for a benefit group member.

B. **Continued eligibility at the six month reporting:** For continued [ERB] TBP eligibility, the benefit group must meet all of the following criteria:

(1) engaged in paid unsubsidized employment for at least 30 hours per week, averaged over a month, for at least four of the last six months;

(2) have earnings from paid unsubsidized employment that do not exceed 150% of the federal poverty guidelines; and

(3) have not reached the benefit group's 18 month [ERB program] TBP lifetime limit as an adult, minor head of household or spouse of a minor head of household.

C. **Action on changes reported between reporting periods for benefit groups assigned to six month reporting:**

(1) The department shall not act on reported changes between reporting periods that would result in a decrease in benefits with the following exceptions:

(a) a benefit group reports income

in excess of 150% of federal poverty guidelines for size of the benefit group;

(b) a benefit group reports, or the department receives documented evidence that the benefit group has moved from the state or intends to move from the state on a specific date;

(c) a benefit group requests closure;

(d) the department receives documented evidence that the head of benefit group has died; or

(e) at the time of a mass change.

(2) A newborn shall be added to the benefit group effective the month following the month the report is received, if the addition is reported to the agency by the benefit group or by the hospital for medicaid purposes.

D. **Notice:** An eligible benefit group that qualifies and is eligible for the bonus shall be issued notice in accordance with policy at 8.102.110.13 NMAC and for the following circumstances:

(1) **Approval:** An approval notice shall be issued at the time the benefit group is determined eligible. The approval notice shall identify the amount of approval and recertification date.

(2) **Benefit change:** A benefit group shall be issued a notice at the time the benefit group is increased or decreased. The amount of benefit is subject to change due to the availability of state or federal funds.

(3) **Ineligibility:** A benefit group shall be issued a notice when the benefit group no longer qualifies or is not eligible for the [ERB program as indicated in Subsection D of 8.102.501.9 NMAC] TBP due to a reportable change or at time of interim reporting.

[8.102.501.9 NMAC - N, 07/01/2008; A, 08/14/2009]

#### 8.102.501.10 BENEFIT ISSUANCE AND DELIVERY:

A. **Benefit issuance:** The [ERB program] TBP benefits are issued and placed into a benefit group's electronic benefit transfer (EBT) cash assistance account as defined in 8.102.610.8 NMAC.

B. **Supportive services:** Participants of the [ERB program] TBP shall be eligible to receive NMW case management and supportive services in accordance with 8.102.620.14, 8.102.620.15, and 8.102.620.16 NMAC.

C. **Special allowances:** A special clothing allowance for school age children and layette payment shall be issued pursuant to 8.102.500.8 NMAC.

[E:] D. **Expungement:** The [ERB program] TBP benefit shall be subject to expungement in accordance with 8.102.610.9 NMAC.

[D:] E. **Issuance and replacement of EBT card:** To access and

use the [ERB program] TBP benefit, the benefit group may use the same EBT card issued for the cash assistance benefits.

#### [E:] F. Approval notification:

Upon approval of the retention bonus program benefit, the household shall be notified of the new benefit amount and the notice shall be mailed to the applicant per 8.102.110.13 NMAC.

[8.102.501.10 NMAC - N, 07/01/2008; A, 08/14/2009]

#### 8.102.501.11 NMW PARTICIPATION REQUIREMENTS:

An [ERB] TBP recipient will be encouraged to participate in work program activities and shall be expected to attend and complete all required activities, such as the assessment, individual responsibility plan (IRP), work participation agreement (WPA) and monthly participation requirements in accordance with 8.102.460.12 through 8.102.460.16 NMAC if not otherwise meeting. Participation requirements apply to each benefit group member whether the benefit group is considered to be a two-parent or single-parent benefit group. No [ERB program] TBP participant shall be sanctioned for NMW non-cooperation.

[8.102.501.11 NMAC - N, 07/01/2008; A, 08/14/2009]

## NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.5 NMAC Section 8 and 9, effective, 8-17-09.

#### 13.14.5.8 ISSUANCE UPON REQUEST AND RECEIPT OF BONA FIDE ORDER:

A. Upon receipt of a bona fide order for any type of title insurance policy or policies to be issued pursuant to 13.14.6 NMAC, an insurer or title insurance agent must deliver to the proposed insured, its authorized agent, other person in a fiduciary relationship with the proposed insured, or the proposed insured's attorney, and if none of the aforementioned persons are available after using the insurer's or title insurance agent's best efforts, then to the person designated by the person opening the order for insurance, a commitment showing the exceptions which will appear in the proposed policy as of the date of the commitment and requirements to be met to insure the title in accordance with the order for insurance. Such commitment shall be delivered as soon as practicable, using the insurer's or title insurance agent's best efforts, allowing reasonably sufficient time

for review prior to the completion of closing of the transaction. No commitment may be issued except upon receipt by the insurer or title insurance agent of a bona fide order for title insurance as set out above.

**B.** The term "binder" is defined in Subsection B of 13.14.1.8 NMAC as "a commitment for title insurance" and the use of the terms 'binder' and 'commitment' shall refer to the same thing. The term "commitment" includes the NM form 6.1 plain language commitment. This regulation shall not apply if the bona fide order is placed after the transaction has been closed. A commitment or binder shall not be issued for the purpose of determining the state of the title of property subject to or to be subject in the future to a foreclosure action, quiet title suit or other litigation.

**C.** When a commitment or binder for one to four family residential property is required to be produced and delivered in accordance with this regulation it shall be delivered with a notice to purchaser/insured NM form 35, 13.14.18.48 NMAC, as the cover page. However, the purchaser(s) need not be identified nor sign the notice until closing. The notice, when required, shall be signed by purchaser(s) at or before the time of closing and retained in the closing file. The notice to purchaser/insured is not required if, prior to the delivery of the commitment or binder, the proposed insured(s) sign a contract for sale of the insured land that includes substantially identical language to that included in NM form 35 and that is completed by checking all appropriate blanks.

**D.** When requested by a proposed insured lender the following language may be added to a title commitment "note: according to the public records, there have been no deeds conveying the property in this commitment within a period of (six to twenty-four) months prior to the date of this commitment, except as follows:" [6-16-86..4-3-95; 13.14.5.8 NMAC - Rn, 13 NMAC 14.5.8, 5-15-00; A, 9-1-07; A, 8-17-09]

#### **13.14.5.9 STANDARD EXCEPTIONS IN SCHEDULE B:**

**A.** All commitments issued on New Mexico property will contain each of the following numbered exceptions verbatim and in the same order stated herein.

(1) Rights or claims of parties in possession not shown by the public records.

(2) Easements, or claims of easements, not shown by the public records.

(3) Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matter which would be disclosed by an accurate survey and inspection of the premises.

(4) Any lien, claim or right to a lien, for services, labor or materiel heretofore

or hereafter furnished, imposed by law and not shown by the public records.

(5) Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy). **note:** Existing inventory of preprinted forms containing the words "dower, curtesy" in standard exception number 5 may be used without penalty until existing supplies are exhausted or the words "dower, curtesy" may be deleted on preprinted forms by crossing them out.

(6) Any titles or rights asserted by anyone including, but not limited to, persons, corporations, governments, or other entities, to lands comprising the shores or bottoms of navigable streams, lakes, or land beyond the line of the harbor or bulkhead lines established or changed by the United States government.

(7) Unpatented mining claims, reservations or exceptions in patents or in acts authorizing the issuance thereof water rights, claims or title to water. **note:** Standard exception 7 may be modified to allow deletion of all language with the exception of the words "water rights, claims or title to water."

(8) Taxes or assessments which are not shown as existing liens by the public records.

(9) Taxes for the year \_\_\_\_\_, and thereafter. (See 13.14.5.12 NMAC)

(10) Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of records the estate or interest or mortgage thereon covered by this commitment.

**B.** Additionally, each commitment may contain the following statement when said commitment is used to commit for both an owner's policy and a loan policy or a loan policy only: "Exceptions numbered \_\_\_\_\_ will not appear in the loan policy but will appear in the owner's policy, if any." If the commitment is for a construction policy, the following statement must be added: "The construction loan policy will contain an exception limiting its coverage to two years duration pursuant to 13.14.7.18 NMAC."

**C.** Each commitment shall contain the following statement: Standard exceptions 1, 2, 3, 4, 6 and/or 8 may be deleted from any policy, and standard exception 7 may be modified on any policy, upon compliance with all provisions of the applicable rules, upon payment of all additional premiums required by the applicable rules, upon receipt of the required documents and upon compliance with the company's underwriting standards for each such deletion. Standard exception 5 may be deleted from the policy if the named

insured in the case of an owner's policy, or the vestee, in the case of a leasehold or loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. The policy to be issued pursuant to this commitment will be endorsed or modified in schedule B by the company to waive its right to demand arbitration pursuant to the conditions and stipulations of the policy at no cost or charge to the insured. The endorsement or the language added to schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the [~~American arbitration association~~] American land title association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured."

[6-16-86, 3-1-90, 6-1-97, 6-1-98; 13.14.5.9 NMAC - Rn, 13 NMAC 14.5.9, 5-15-00; A, 8-29-03; A, 7-1-05; A, 8-17-09]

### **NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION**

This is an amendment to 13.14.6 NMAC Section 8, effective, 8-17-09.

#### **13.14.6.8 OWNER'S POLICIES:**

**A.** Owner's policies shall be written to protect the estate or interest in land held by the Insured (e.g., fee simple, easement, etc.). Except as otherwise provided herein, all owner's policies shall be issued for the amount of the current sales price of the land and any existing improvements appurtenant thereto, plus, at the option of the insured, the cost of improvements immediately contemplated to be erected thereupon.

**B.** If no sale is being made, at time of issuance of policy, all owners' policies shall be issued for an amount equal to the value of the land and any existing improvements appurtenant thereto, with the same option concerning immediately contemplated improvements.

**C.** In either instance, an owner's policy insuring such contemplated improvements shall contain a pending improvements clause or endorsement. In the event the owner's policy is issued at the time of payoff of a real estate contract and recording of a warranty deed, the owner's policy shall be issued for the amount of the contract price, except if the purchaser requests, and provides evidence of value, then it may be issued for the amount equal

to the value of the land and any existing improvements appurtenant thereto.

**D.** An owner's policy may be endorsed to reflect the current value of the estate insured (upon payment of the current basic premium according to the schedule less the amount previously paid for said policy) if the insurer's underwriting standards are met; provided, however, that the effective date of the policy shall remain unchanged and no affirmative coverages or down dates shall be added to the policy. Owner's policies may insure multiple tracts acquired from different parties at the same or different times.

**E.** NM form 55, named insured endorsement, shall be ~~attached to all Owner's Policies issued after August 15, 2001 and shall be~~ provided to all insureds requesting the endorsement on owner's policies or leasehold owner's policies previously issued prior to August 1, 2008 without the endorsement.

[6-16-86...3-1-91; 13.14.6.8 NMAC - Rn, 13 NMAC 14.6.8, 5-15-00; 13.14.6.8 NMAC - A, 8-1-01; A, 3-1-02; A, 8-17-09]

**NEW MEXICO  
PUBLIC REGULATION  
COMMISSION  
INSURANCE DIVISION**

This is an amendment to 13.14.8 NMAC Section 11 and 16, effective, 8-17-09.

**13.14.8.11 NON-IMPUTATION ENDORSEMENTS:** The NM form 28, non-imputation endorsement - full equity transfer, NM form 28.1, non-imputation endorsement - additional insured, and the NM form 28.2, non-imputation endorsement - partial equity transfer, may be issued on an existing or currently issued owner's policy or loan policy insuring title to property held by a corporation, limited liability company, or partnership as an insured even when there has been no conveyance of title of such property, but there has been (1) a transfer/issuance of all or a portion of the stock of the insured corporation, (2) a transfer/substitution of all or a portion of the interests of the insured partnership, or (3) a transfer/sale of all or a portion of the membership interests of the insured limited liability company. This endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of two years following the issuance of the endorsement.

[2-6-87; 13.14.8.11 NMAC - Rn, 13 NMAC 14.8.11, 5-15-00; A, 7-1-06; A, 8-17-09]

**13.14.8.16 RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENTS:**

**A.** Upon being furnished with a satisfactory survey, and where the underwriter determines the risk to be acceptable:

(1) NM form 50, restrictions, encroachments and minerals endorsement, and the NM form 50.1, restrictions, encroachments and minerals endorsement - lender improved land may be attached only to a loan policy but shall not be issued where the intended use of the property is 1-4 family residential;

(2) NM form 56, restrictions, encroachments and minerals endorsement - unimproved land, and the NM form 56.1 restrictions, encroachments and minerals endorsement - unimproved land may be attached only to an owner's policy covering unimproved land; and

(3) NM form 57, restrictions, encroachments and minerals endorsement - improved land, and the NM form 57.1, restrictions, encroachments and minerals endorsement - improved land may be attached only to an owner's policy covering improved land.

**B.** Each endorsement is to be issued only in conjunction with or following:

(1) the issuance of survey coverage, as authorized by 13.14.6.14 or 13.14.7.13 NMAC;

(2) the modification of standard exception 7; and

(3) the mention in a special exception of any applicable patent and acts authorizing the issuance thereof, as authorized by Paragraph (7) of Subsection A of 13.14.5.9 NMAC.

**C.** The coverage relating to minerals provided under paragraph 3(b) of NM form 50, paragraph 4 of NM form 50.1, paragraph 2 of NM form 56 and NM form 56.1, [or] paragraph 2(b) of NM form 57, or paragraph 3 of NM form 57.1, as appropriate shall not be issued where minerals have been severed, unless there has been a waiver of the right of entry or surface usage of the mineral reservation.

**D.** The coverage provided by any part of each endorsement may be deleted but may not be increased by:

(1) crossing out the part on the form of endorsement;

(2) retyping the form leaving out the part; or

(3) special endorsement.

**E.** Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two years following issuance of the endorsement. [6-1-98; 13.14.8.16 NMAC - Rn, 13 NMAC 14.8.16, 5-15-00; A, 3-1-02; A, 8-17-09]

**NEW MEXICO  
PUBLIC REGULATION  
COMMISSION  
INSURANCE DIVISION**

This is an amendment to 13.14.10 NMAC Section 8, 13, 14, 15, 21, 34 and 40, effective, 8-17-09.

**13.14.10.8 ASSIGNMENTS OF MORTGAGES:**

When a mortgage upon which a loan policy has been issued is assigned, each successive assignee may obtain an assignment of mortgage endorsement, NM form 24, or an assignment and date down endorsement, NM form 24.1 from the insuring company certifying the title to include the date of recording the assignment, for a premium of twenty-five dollars (\$25.00) if issued within six (6) months of the date of the policy or date of the last endorsement reflecting an earlier assignment, or a premium of sixty-five dollars (\$65.00) if issued more than six (6) months from the date of the policy or last endorsement reflecting an earlier assignment, if any, whichever is later.

[6-16-86, 2-16-87, 6-1-98; 13.14.10.8 NMAC - Rn, 13 NMAC 14.10.8, 5-15-00; A, 5-31-00; A, 8-17-09]

**13.14.10.13 MANUFACTURED HOUSING ENDORSEMENT:**

When a manufactured housing endorsement, NM form 16, a manufactured housing unit (conversion - loan), NM form 16.1, or a manufactured housing unit (conversion - owner) NM form 16.2 is issued the premium for each endorsement shall be seventy-five dollars (\$75.00) in addition to the premium charged for the policy whether the endorsement is attached at issuance of the policy or thereafter.

[6-16-86, 2-16-87, 6-1-98; 13.14.10.13 NMAC - Rn, 13 NMAC 14.10.13, 5-15-00; A, 5-31-00; A, 7-1-04; A, 7-1-06; A, 8-17-09]

**13.14.10.14 CONDOMINIUM ENDORSEMENT:**

A condominium endorsement may be issued at the same time as and attached to [a] an owner's or a loan policy for a premium of twenty-five dollars (\$25.00). Paragraph 3 of NM form 30 may be deleted at the option of the insurer. Each insurer shall establish its written underwriting requirements for such deletion and shall furnish its agent(s) written instructions relating thereto.

[6-16-86, 2-16-87, 6-1-98; 13.14.10.14 NMAC - Rn, 13 NMAC 14.10.14, 5-15-00; A, 5-31-00; A, 8-17-09]

**13.14.10.15 PLANNED UNIT DEVELOPMENT (PUD)**

**ENDORSEMENT:** A planned unit development endorsement, NM form 13, and the planned unit development (unpaid assessments) NM form 13.1 may be issued at the same time as and attached to a policy for a premium of twenty-five dollars (\$25.00). [6-16-86, 2-16-87, 6-1-98; 13.14.10.15 NMAC - Rn, 13 NMAC 14.10.15, 5-15-00; A, 5-31-00; A, 8-17-09]

**13.14.10.21 NON-IMPUTATION ENDORSEMENT:** When a non-imputation endorsement - full equity transfer (NM form 28), a non-imputation endorsement - additional insured (NM form 28.1), or a non-imputation endorsement - partial equity transfer. (NM form 28.2) is issued pursuant to 13.14.8.11 NMAC - the premium therefore shall be one dollar (\$1.00) per thousand for each thousand dollars of insurance set forth in schedule A. [2-6-87, 4-1-94; 13.14.10.21 NMAC - Rn, 13 NMAC 14.10.21, 5-15-00; A, 8-17-09]

**13.14.10.34 RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENTS:** NM forms 50, 50.1, 56, 56.1, [and] 57, and 57.1 shall not be issued on residential properties with four or fewer units. The premium charge for issuance of these endorsements shall be 10% of the full basic premium rate. Agents shall receive commissions for liabilities up to \$27,000,000; agents' retention shall be zero for liabilities greater than \$27,000,000. In no case shall the premium charge for the issuance of NM forms 50, 50.1, 56, 56.1, [or] 57, or 57.1 be less than \$250.00. [6-1-98; 13.14.10.34 NMAC - Rn, 13 NMAC 14.10.34, 5-15-00; A, 7-15-02; A, 8-17-09]

**13.14.10.40 NAMED INSURED ENDORSEMENT:** When a named insured endorsement, NM form 55, is [issued on or after August 15, 2001 or] requested [at the time] for an owner's policy or leasehold owner's policy [is] issued on or after August 15, 2001, there shall be no charge for the endorsement. When a named insured endorsement, NM form 55, is issued or requested [after] for an owner's policy or leasehold owner's policy [has been] issued prior to August 15, 2001, the premium charge for issuance of the endorsement shall be twenty-five dollars (\$25.00). [13.14.10.40 NMAC - N, 8-1-01; A, 3-1-02; A, 8-17-09]

**NEW MEXICO PUBLIC REGULATION COMMISSION  
INSURANCE DIVISION**

This is an amendment to 13.14.17 NMAC Section 12, effective, 8-17-09.

**13.14.17.12 FORM 4 - TRANSACTION REPORT:**

<b>NEW MEXICO TITLE INSURERS STATISTICAL REPORT FORM 4 - TRANSACTION REPORT</b> For the Calendar Year Ending December 31, 20____ <b>NEW MEXICO EXPERIENCE ONLY</b>						
<b>Insurance Company</b>						
NM Form No.	Transaction code	Transaction Type	NMAC Rate Provision	No. of Transactions	Premiums	Dependent on basic premium rate?
none	0001	Charge for Additional Chain of Title	13.14.9.16			No
none	0002	Charge for Unplatted Tract of Unusual Complexity	13.14.9.16			Yes
none	0003	Abstract Retirement Credit	13.14.9.24			Yes
none	0004	Loan Policy Insuring Construction Policy - Mechanic's Lien Coverage With Evidence Of Priority	13.14.9.40G			No
none	0005	Loan Policy Insuring Construction Policy - Mechanic's Lien Coverage Without Evidence Of Priority	13.14.9.40G			Yes
none	0006	Owner's Policy - Mechanic's Lien Coverage - Filing Period Expired	13.14.10.9A			No
none	0007	Owner's Policy - Mechanic's Lien Coverage - Filing Period Not Expired	13.14.10.9B			Yes
none	0008	Survey Coverage Endorsement	13.14.10.10			Yes
none	0009	Duplicate Original Policy	13.14.9.33			No
none	0010	Navigable Streams. Lakes, etc. - Standard Exception 6	13.14.10.29			No
none	0011	Permissible Modification - Standard Exception No. 7	13.14.10.35			No
none	0012	Waiver of Arbitration	None			No
none	0013	Cancellation Fee	13.14.9.19B			No
none	0014	Permissible Deletion - Standard Exception No. 8	13.14.10.46			No
1	0101	Owner's Policy	13.14.9.20			Yes
1	0102	Owner's Policy - With Bulk Rate	13.14.9.23			Yes

1	0103	Multiple Owner's on Same Land - Simultaneous Issue	13.14.9.32		Yes
1	0104	Replacement Owner's Policy	13.14.9.26		Yes
1	0110	Owner's Policy - Reissue (10% Discount)	13.14.9.35		Yes
1	0115	Owner's Policy - Reissue (15% Discount)	13.14.9.35		Yes
1	0120	Owner's Policy - Reissue (20% Discount)	13.14.9.35		Yes
1	0125	Owner's Policy - Reissue (25% Discount)	13.14.9.35		Yes
2	0201	Loan Policy - Single Issue	13.14.9.22		Yes
2	0202	Loan Policy - Simultaneous Issue with Owner's Policy	13.14.9.30		No
2	0203	Loan Policy - Second Mortgage or Subsequent Issue	13.14.9.36		Yes
2	0204	Replacement Loan Policy	13.14.9.26		Yes
2	0240	Loan Policy - Substitution Rate (less than 2 years - 40%)	13.14.9.39		Yes
2	0245	Loan Policy - Substitution Rate (more than 2 years, less than 3 - 45%)	13.14.9.39		Yes
2	0250	Loan Policy - Substitution Rate (more than 3 years, less than 4 - 50%)	13.14.9.39		Yes
2	0255	Loan Policy - Substitution Rate (more than 4 years, less than 5 - 55%)	13.14.9.39		Yes
2	0260	Loan Policy - Substitution Rate (more than 5 years, less than 6 - 60%)	13.14.9.39		Yes
2	0265	Loan Policy - Substitution Rate (more than 6 years, less than 7 - 65%)	13.14.9.39		Yes
2	0270	Loan Policy - Substitution Rate (more than 7 years, less than 8 - 70%)	13.14.9.39		Yes
2	0275	Loan Policy - Substitution Rate (more than 8 years, less than 9 - 75%)	13.14.9.39		Yes
2	0280	Loan Policy - Substitution Rate (more than 9 years, less than 10 - 80%)	13.14.9.39		Yes
3	0300	Construction Loan Policy	13.14.9.40A		Yes
6	0600	Commitment for Title Insurance	13.14.9.19A		No
<u>6.1</u>	<u>0601</u>	<u>Plain Language Commitment for Title Insurance</u>	<u>13.14.9.19A</u>		<u>No</u>
7	0700	U.S. Policy, ALTA 1963	13.14.9.25		Yes
9	0900	Notice of Availability of Owner's Title Insurance	None		No
10	1000	Facultative Reinsurance Agreement	None		No
11	1101	Construction Loan Extension Endorsement	13.14.9.40B		No
11	1102	Pending Disbursement Clause - Subsequent Attachment	13.14.9.40F		No
11	1103	Pending Disbursement Clause - Simultaneous Insertion or Attachment	13.14.9.40F		No
11	1104	Correction/Multipurpose Endorsement	13.14.8.8		No
11	1105	Renewal, Extension, Modification & Partial Release Endorsement	13.14.10.20		No
11	1106	Extension of Commitment for Title Insurance	13.14.9.19A		No
11	1108	Increase in Coverage	13.14.6.8D		Yes
12	1200	Condominium Endorsement to Loan Policy (ALTA 4)	13.14.10.14		No
13	1300	Planned Unit Development Endorsement (ALTA 5-06)	13.14.10.15		No
<u>13.1</u>	<u>1301</u>	<u>Planned Unit Development Endorsement Unpaid Assessments (ALTA 5.1-06)</u>	<u>13.14.10.15</u>		<u>No</u>
14	1400	Variable Rate Mortgage Endorsement (ALTA 6-06)	13.14.10.12		No
15	1500	Variable Rate Mortgage Endorsement - Negative Amortization (ALTA 6.[+] <u>2-06</u> )	13.14.10.12		No
16	1600	Manufactured Housing Unit Endorsement (ALTA 7-06)	13.14.10.13		No
<u>16.1</u>	<u>1601</u>	<u>Manufactured Housing Unit Endorsement (Conversion - Loan) (ALTA 7.1-06)</u>	<u>13.14.10.13</u>		<u>No</u>
<u>16.2</u>	<u>1602</u>	<u>Manufactured Housing Unit Endorsement (Conversion - Owner's) (ALTA 7.2-06)</u>	<u>13.14.10.13</u>		<u>No</u>
17	1700	Revolving Credit Endorsement	13.14.10.12		No

18	1800	Construction Loan Policy Endorsement A	13.14.9.40D		Yes
19	1900	Construction Loan Policy Endorsement D	13.14.9.40E		No
20	2001	Leasehold Owner's Endorsement (to create policy) ( <u>ALTA 13-06</u> )	13.14.10.19		No
20	2002	Leasehold Loan Policy - Simultaneous Issue with Owner's Policy	13.14.9.30		No
20	2003	Leasehold Loan Policy - Subsequent Issue	13.14.9.31		Yes
20	2010	Leasehold Owner's Policy - Reissue (10% Discount)	13.14.9.35		Yes
20	2015	Leasehold Owner's Policy - Reissue (15% Discount)	13.14.9.35		Yes
20	2020	Leasehold Owner's Policy - Reissue (20% Discount)	13.14.9.35		Yes
20	2025	Leasehold Owner's Policy - Reissue (25% Discount)	13.14.9.35		Yes
21	2100	Leasehold Loan Endorsement (to create policy) ( <u>ALTA 13.1-06</u> )	13.14.10.19		No
22	2200	Pending Disbursement Down Date Endorsement	13.14.10.18		No
23	2300	Pending Improvements Endorsement	13.14.10.23		No
24	2400	Assignment of Mortgage Endorsement[Ø] ( <u>ALTA 10-06</u> )	13.14.10.8		
24.1	2401	Assignment and Date Down Endorsement ( <u>ALTA 10.1-06</u> )	13.14.10.8		
25	2500	Additional Advance Endorsement	13.14.10.11		No
26	2600	Partial Coverage Endorsement	None		No
27	2700	U. S. Policy, ALTA 1963 Down Date Endorsement	13.14.10.16		No
28	2800	Non-Imputation Endorsement - Full Equity Transfer ( <u>ALTA 15-06</u> )	13.14.10.21		Yes
28.1	2801	Non-Imputation Endorsement - Additional Insured ( <u>ALTA 15.1-06</u> )	13.14.10.21		Yes
28.2	2802	Non-Imputation Endorsement - Partial Equity Transfer ( <u>ALTA 15.2-06</u> )	13.14.10.21		Yes
29	2900	Environmental Protection Lien Endorsement ( <u>ALTA 8.1</u> )	13.14.10.22		No
30	3000	Condominium Endorsement to Owner's Policy ( <u>ALTA 4.1-06</u> )	13.14.10.24		No
31	3100	Owner's Leasehold Conversion Endorsement (to create policy)	13.14.9.38		Yes
32	3200	Coordinate and Proportionate Endorsement	None		No
33	3300	Change of Name Endorsement	None		No
34	3400	U.S. Policy, ALTA 1991	13.14.9.25		Yes
36	3600	Limited Title Search Policy (LTSP)	13.14.9.27		No
37	3700	Continuation Endorsement for LTSP	13.14.10.25		No
38	3800	Revolving Credit, Variable Rate Endorsement For LTSP	13.14.10.26		No
39	3900	Lenders' Creditors' Rights Endorsement	13.14.10.28		No
40	4000	Owner's Creditors' Rights Endorsement	13.14.10.27		No
41	4100	Foreclosure Guarantee Policy 0	13.14.9.28		
42	4200	Foreclosure Guarantee Policy Down Date Endorsement	13.14.10.18		No
43	4300	Insuring Around Endorsement	None		No
44	4400	Revolving Credit, Increased Credit Limit Endorsement	13.14.10.30		No
45	4500	Residential Limited Coverage Junior Loan Policy	13.14.9.29		No
46	4600	Down Date Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.10.32		No
47	4700	Revolving Credit, Variable Rate Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.10.33		No
48	4800	Truth-in-Lending Endorsement ( <u>ALTA 2-06</u> )	13.14.10.31		Yes
50	5000	Restrictions, Encroachments and Minerals Endorsement - Loan Policy ( <u>ALTA 9-06</u> )	13.14.10.34		Yes
50.1	5001	Restrictions, Encroachments and Minerals Endorsement - Lender - Improved Land ( <u>ALTA 9.3-06</u> )	13.14.10.34		Yes
51	5100	Land Abuts Street Endorsement	13.14.10.36		No

52	5200	Designation of Improvements, Address Endorsement	13.14.10.37		No
53	5300	Same as Survey Endorsement	13.14.10.38		No
54	5400	Contiguity of Single Parcel Endorsement (ALTA 19.1-06)	13.14.10.39		No
55	5500	Named Insured Endorsement	13.14.10.40		No
56	5600	Restrictions, Encroachments, & Minerals Endorsement - Unimproved Land (ALTA 9.1-06)	13.14.10.34		Yes
56.1	5601	Restrictions, Encroachments, & Minerals Endorsement - Owner - Unimproved Land (ALTA 9.4-06)	13.14.10.34		Yes
57	5700	Restrictions, Encroachments, & Minerals Endorsement - Improved Land (ALTA 9.2-06)	13.14.10.34		Yes
57.1	5701	Restrictions, Encroachments, & Minerals Endorsement - Improved Land (ALTA 9.5-06)	13.14.10.34		Yes
58	5800	First Loss Endorsement (ALTA 20-06)	13.14.10.41		No
59	5900	Last Dollar Endorsement	13.14.10.42		No
60	6000	Loan Policy Aggregation Endorsement (ALTA 12-06)	13.14.10.43		No
61	6100	Foundation Endorsement	13.14.10.44		No
62	6200	Assignment of Rents/Leases Endorsement	13.14.10.45		No
63	6300	Short Form Residential Loan Policy	13.14.9.22		Yes
64	6400	Zoning Endorsement, Unimproved Land (ALTA 3[-0]-06)	13.14.10.47		Yes
65	6500	Zoning Endorsement, Completed Structure (ALTA 3.1-06)	13.14.10.48		Yes
66	6600	Contiguity of Multiple Parcels Endorsement (ALTA 19-06)	13.14.10.39		No
67	6700	Access and Entry Endorsement	13.14.10.49		No
		<b>TOTAL</b>			

Crosscheck with Form 1:	0
Difference	0

Explanation for Difference (if any)	

[13.14.17.12 NMAC - Rp, 13.14.17.12 NMAC, 7-1-06; A, 8-17-09]

## NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.18 NMAC Section 13, 25, 26, 27, 49, 54 and 89, effective, 8-17-09.

**13.14.18.13 APPROVED FORMS:** The following are the only title insurance forms promulgated for use in New Mexico:

NM FORM NO.	ALTA FORM NO. & DATE	NAME OF FORM	NMAC NO.
1	6-17-06	Owner's Policy	13.14.18.14
2	6-17-06	Loan Policy	13.14.18.15
3	10-17-92	Construction Loan Policy	13.14.18.16
6	6-17-06	Commitment for Title Insurance	13.14.18.19
6.1	6-17-06	Plain Language Commitment for Title Insurance	13.14.18.19
7	1963	U.S. Policy	13.14.18.20
8	3-27-87	Closing Protection Letter	13.14.18.21
9		Notice of Availability of Owner's Title Insurance	13.14.18.22
10	9-24-94	Facultative Reinsurance Agreement	13.14.18.23
11		Multipurpose Endorsement	13.14.18.24
12	4-06, 6-17-06	Condominium [(Lender's Policy)] Endorsement	13.14.18.25
13	5-06, 6-17-06	P.U.D. Endorsement [(Loan Policy)]	13.14.18.26
13.1	5.1-06, 6-17-06	P.U.D. Endorsement [(Owner's Policy)]	13.14.18.27



14	6-06, 6-17-06	Variable Rate, Negative Amortization Endorsement	13.14.18.28
15	6.2-06, 6-17-06	Variable Rate, Negative Amortization Endorsement	13.14.18.29
16	7-06, 6-17-06	Manufactured Housing Unit Endorsement	13.14.18.30
16.1	7.1-06, 6-17-06	Manufactured Housing Conversion (Loan) Endorsement	13.14.18.31
16.2	7.2-06, 6-17-06	Manufactured Housing Conversion (Owner's) Endorsement	13.14.18.32
17		Revolving Credit Endorsement	13.14.18.33
18	A, Rev. 6-1-87	Construction Loan Policy Endorsement A	13.14.18.34
19	D, Rev. 6-1-87	Construction Loan Policy Endorsement D	13.14.18.35
20	13-06, 6-17-06	Leasehold Owner's Endorsement	13.14.18.36
21	13.1-06, 6-17-06	Leasehold Loan Endorsement	13.14.18.37
22		Pending Disbursement Down Date Endorsement	13.14.18.38
23		Pending Improvements Endorsement	13.14.18.39
24	10-06, 6-17-06	Assignment Endorsement	13.14.18.40
24.1	10.1-06, 6-17-06	Assignment and Date Down Endorsement	13.14.18.41
25		Additional Advance Endorsement	13.14.18.42
26		Partial Coverage Endorsement	13.14.18.43
27	1963	ALTA US Policy Down Date Endorsement	13.14.18.44
28	15-06, 6-17-06	Non-Imputation - Full Equity Transfer Endorsement	13.14.18.45
28.1	15.1-06, 6-17-06	Non-Imputation - Additional Interest Endorsement	13.14.18.46
28.2	15.2-06, 6-17-06	Non-Imputation - Partial Equity Transfer Endorsement	13.14.18.47
29	8.1-06, 6-17-06	Environmental Protection Lien Endorsement	13.14.18.48
30	4.1-06, 6-17-06	Condominium [(Owner's Policy)] Endorsement	13.14.18.49
31		Owner's Leasehold Conversion Endorsement	13.14.18.50
32		Coordinate and Proportionate Endorsement	13.14.18.51
33		Change of Name Endorsement	13.14.18.52
34	1991	U.S. Policy	13.14.18.53
35	Rev. 7-01-08	Notice to Purchaser Insured	13.14.18.54
41		Foreclosure Guarantee Policy	13.14.18.60
42		Foreclosure Guarantee Policy Down Date Endorsement	13.14.18.61
43		Insuring Around Endorsement	13.14.18.62
44		Revolving Credit, Increased Credit Limit Endorsement	13.14.18.63
45	10-19-96	Residential Limited Coverage Junior Loan Policy	13.14.18.64
46	10-19-96	Down Date Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.18.65
47	10-19-96	Revolving Credit/Variable Rate Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.18.66
48	2-06, 6-17-06	Truth-in-Lending Endorsement	13.14.18.67
49		Notice of Availability of Future Increase in Coverage	13.14.18.68
50	9-06, 6-17-06	Restrictions, Encroachments, Minerals - Loan Policy Endorsement	13.14.18.69
50.1	9.3-06, 6-17-06	Restrictions, Encroachments, Minerals - Loan Policy Endorsement	13.14.18.70
51		Land Abuts Street Endorsement	13.14.18.71
52		Designation of Improvement, Street Endorsement	13.14.18.72
53		Same as Survey Endorsement	13.14.18.73
54	19.1-06, 6-17-06	Contiguity Single Parcel Endorsement	13.14.18.74
55		Named Insured Endorsement	13.14.18.75
56	9.1-06, 6-17-06	Restrictions, Encroachments, Minerals - Owner's Policy (Unimproved Land) Endorsement	13.14.18.76
56.1	9.4-06, 6-17-06	Restrictions, Encroachments, Minerals Endorsement (Owner's Policy -- Unimproved Land)	13.14.18.77
57	9.2-06, 6-17-06	Restrictions, Encroachments, Minerals - Owner's Policy (Improved Land) Endorsement	13.14.18.78
57.1	9.5-06, 6-17-06	Restrictions, Encroachments, Minerals (Owner's Policy, Improved Land) Endorsement	13.14.18.79
58	20-06, 6-17-06	First Loss - Multiple Parcel Transactions Endorsement	13.14.18.80
59		Last Dollar Endorsement	13.14.18.81
60	12-06, 6-17-06	Aggregation Endorsement	13.14.18.82
61		Foundation Endorsement	13.14.18.83

62		Assignment of Rents/Leases Endorsement	13.14.18.84
63	6-17-06	Short Form Residential Loan Policy	13.14.18.85
64	3-06, Rev. 6-17-06	Zoning - Unimproved Land Endorsement	13.14.18.86
65	3.1-06, Rev. 6-17-06	Zoning - Completed Structure Endorsement	13.14.18.87
66	19-06, 6-17-06	Contiguity - Multiple Parcels Endorsement	13.14.18.88
67	17	Access and Entry Endorsement	13.14.18.89

[6-16-86...4-1-96; 6-1-97, 6-1-98; 13.14.18.13 NMAC - Rn, 13 NMAC 14.2.9 & A, 5-15-00; 13.14.18.13 NMAC - A, 8-1-01; A, 3-1-02; A, 7-1-03; A, 7-1-04; A, 7-1-05; A, 7-1-06; A, 8-1-08; A, 8-17-09]

**13.14.18.25 NM FORM 12: CONDOMINIUM [~~LENDER'S POLICY~~] ENDORSEMENT ALL ASSESSMENTS:**

**Condominium [~~Lender's Policy~~] Endorsement**

Attached To Policy No. \_\_\_\_\_

Issued By

Blank Title Insurance Company

[NM Form 12; ALTA Form 4, Rev. 2006]

The company insures against loss or damage sustained by the insured by reason of:

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents. The restrictive covenants do not contain any provisions that will cause a forfeiture or reversion of the title. As used in this paragraph 3, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the land has been recorded in the public records at date of policy and is not excepted in Schedule B.
4. The priority of any lien for charges and assessments at date of policy provided for in the condominium statutes and condominium documents over the lien of any insured mortgage identified in Schedule A.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at date of policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
7. The failure of the title by reason of a right of first refusal, to purchase the unit and its common elements that was exercised or could have been exercised at date of policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the amount of insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated: \_\_\_\_\_

BLANK TITLE INSURANCE COMPANY

Authorized Signatory: \_\_\_\_\_

[6-16-86...4-1-93; 13.14.18.25 NMAC - Rn, 13 NMAC 14.8.A.9, 5-15-00; A, 8-1-08; A, 8-17-09]

**13.14.18.26 NM FORM 13 - PLANNED UNIT DEVELOPMENT ENDORSEMENT [~~LOAN POLICY~~] ALL ASSESSMENTS:**

**Planned Unit Development Endorsement [~~Loan Policy~~]**

Attached to Policy No. \_\_\_\_\_

Issued by

Blank Title Insurance Company

[NM Form 13; ALTA Form 5, Rev. 2006]

The company insures against loss or damage sustained by the insured by reason of:

(1) Present violations of any restrictive covenants referred to in Schedule B which restrict the use of the Land. The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of the Title. As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the public records at date of policy and is not excepted in Schedule B.

(2) The priority of any lien for charges and assessments at date of policy in favor of any association of homeowners which are provided for in any document referred to in Schedule B over the lien of any insured mortgage identified in Schedule A.

(3) The enforced removal of any existing structure on the land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.

(4) The failure of the title by reason of a right of first refusal to purchase the Land which was exercised or could have been exercised at date of policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the amount of insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated \_\_\_\_\_

BLANK TITLE INSURANCE COMPANY

Authorized Signatory \_\_\_\_\_

[6-16-86...4-1-93; 13.14.18.26 NMAC - Rn, 13 NMAC 14.8.A.10, 5-15-00; A, 8-1-08; A, 8-17-09]

13.14.18.27 NM FORM 13.1: PLANNED UNIT DEVELOPMENT

**ENDORSEMENT [(OWNER'S POLICY)] UNPAID ASSESSMENTS:**

**Planned Unit Development Endorsement [(Owner's Policy)] Attached to Policy No. \_\_\_\_\_ Issued by Blank Title Insurance Company [NM Form 13.1; ALTA Form 5.1, Rev. 2006]**

The company insures against loss or damage sustained by the insured by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land. The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of the Title. As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

2. Any charges or assessments in favor of any association of homeowners, which are provided for in any document referred to in Schedule B, due and unpaid at Date of Policy.

3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.

4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Dated \_\_\_\_\_

BLANK TITLE INSURANCE COMPANY

Authorized signatory \_\_\_\_\_

[6-16-86, 5-1-88; 13.14.18.27 NMAC - Rn, 13 NMAC 14.8.A.11, 5-15-00; 13.14.18.27 NMAC - N, 8-1-08; A, 8-17-09]

13.14.18.49 NM FORM 30: CONDOMINIUM [(OWNER'S POLICY)] ENDORSEMENT UNPAID ASSESSMENTS:

**Condominium [(Owner's Policy)] Endorsement Attached To Policy No. \_\_\_\_\_ Issued By Blank Title Insurance Company [NM Form 30; ALTA Form 4.1, Rev. 2006]**

The company insures against loss or damage sustained by the insured by reason of:

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.

2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.

3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents. The restrictive covenants do not contain any provisions that will cause a forfeiture or reversion of the Title. As used in this paragraph 3, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at date of policy and is not excepted in Schedule B.

4. Any charges or assessments provided for in the condominium statutes and condominium documents due and unpaid at date of policy.

5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.

6. Any obligation to remove any improvements that exist at Date of Policy

because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.

7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements which was exercised or could have been exercised at date of policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the date of policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

(Witness clause optional)

Dated: \_\_\_\_\_

BLANK TITLE INSURANCE COMPANY

Authorized signatory \_\_\_\_\_

[6-16-86...4-1-93; 13.14.18.49 NMAC - Rn, 13 NMAC 14.7.D.8 through 14.7.D.11, 5-15-00; Repealed, 7-1-05; 13.14.18.49 NMAC - Rn, 13.14.18.43 NMAC & A, 8-1-08; A, 8-17-09]

**13.14.18.54 NM FORM 35: NOTICE TO PURCHASER INSURED:**

**NOTICE TO PURCHASER INSURED [NM Form 35]**

Name of Purchaser(s): \_\_\_\_\_  
Commitment No.: \_\_\_\_\_  
Commitment issue date: \_\_\_\_\_  
Short Description of Property: \_\_\_\_\_  
Name and Telephone Number of Agency/ Insurer ("Company"): \_\_\_\_\_

READ THIS NOTICE TO FAMILIARIZE YOURSELF WITH ADDITIONAL COVERAGES AVAILABLE

The New Mexico Insurance Department requires that this Notice be given in connection with all commitments/binders issued for title insurance owner's policies on one to four residential family properties.

THIS NOTICE SHOULD BE RETURNED TO THE COMPANY AT THE EARLIEST POSSIBLE TIME. IT MUST BE SIGNED NOT LATER THAN CLOSING. FAILURE

TO ACT IMMEDIATELY COULD DELAY CLOSING SINCE NO TITLE POLICY CAN BE ISSUED UNTIL THIS DOCUMENT IS SIGNED AND RETURNED TO THE COMPANY.

Standard title insurance policies do not cover certain risks. These risks include the standard exceptions shown on your commitment/binder schedule "B", which will also be part of your policy. Standard exceptions 1, 2, 3, 4, and 5[-6, 7 and 8] (like all the exceptions) limit the coverage under your title policy. However, some of this coverage can be reinstated as described below.

Standard Exception 1 (Parties in Possession) excludes coverage for certain claims of tenants, squatters or other persons who may claim possession of the property. Standard Exception 1 may be deleted and the coverage reinstated if you meet certain requirements. There is no extra premium charge for this coverage, but there may be a charge for inspection of the property.

Do you want this coverage? Yes \_\_\_\_\_ No \_\_\_\_\_

Standard Exception 2 (Unrecorded Easements) excludes coverage for easements not shown in the public records. Standard exception 2 may be deleted and the coverage reinstated if you meet certain requirements. There is no extra premium charge for this coverage, but a survey meeting the insurer's requirements is required and there may be a charge for an inspection.

Do you want this coverage? Yes \_\_\_\_\_ No \_\_\_\_\_

Standard Exception 3 (Survey Protection) excludes coverage for encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises. Standard exception 3 may be deleted and the coverage reinstated if you meet certain requirements. The charge for this coverage is 15% of the full basic rate, and you must provide a survey meeting the insurer's requirements for insurability.

Do you want this coverage? Yes \_\_\_\_\_ No \_\_\_\_\_

Standard Exception 4 (Lien Coverage) excludes coverage for certain liens (i.e. claims filed for payment for services and materials provided in connection with the property) not filed in the public records on the policy date. Standard exception 4 may be deleted and the coverage reinstated if you

satisfy certain requirements. The charge for this coverage is \$25 if the statutory time limit for filing a lien has expired. If the time limit has not expired, the charge is \$3.00 for each \$1,000 of insurance. In either case, you will have to provide information that the company requires, and the Buyer or Seller will be responsible for any cost of providing such information.

Do you want this coverage? Yes \_\_\_\_\_ No \_\_\_\_\_

~~[Standard Exception 6 (Any title to lands comprising the shores or bottoms of navigable streams, lakes, etc.) except coverage for title to land that is beneath navigable waters if there are any on the land you are acquiring. Standard Exception 6 may be deleted and the coverage reinstated if the title company is provided a satisfactory survey and upon review of the survey the deletion is authorized by the title insurance underwriter. The charge for this coverage is \$25.]~~

~~[Do you want this coverage?— Yes \_\_\_\_\_ No \_\_\_\_\_]~~

~~[Standard Exception 7 (Unpatented mining claims; water rights, claims or title to water coverage) excepts coverage for unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water. All of Standard Exception 7 may be deleted except "Water rights, claims or title to water" if the property is subject to such coverage, and certain underwriter requirements are met. The charge for this coverage is \$25.]~~

~~[Do you want this coverage?— Yes \_\_\_\_\_ No \_\_\_\_\_]~~

~~[Standard Exception 8 (Taxes or assessments which are not shown as existing liens by the public records) excepts coverage for taxes or assessments which are not shown as existing liens by the public records. All of Standard Exception 8 may be deleted upon request, upon being paid the premium provided for in 13.14.10.46 NMAC, and upon being furnished with a satisfactory search of the appropriate records, if any. The charge for this coverage is \$25.]~~

~~[Do you want this coverage?— Yes \_\_\_\_\_ No \_\_\_\_\_]~~

PLEASE ACKNOWLEDGE YOU HAVE BEEN MADE AWARE THAT YOU MAY INCREASE YOUR TITLE POLICY AMOUNT IF YOU ADD IMPROVEMENTS, OR IF THE VALUE OF YOUR PROPERTY INCREASES OVER TIME, BY REQUESTING AN INCREASE IN COVERAGE AND PAYING THE

APPLICABLE PREMIUMS. THIS WILL NOT CHANGE THE TERMS OF THE POLICY OTHER THAN THE AMOUNT.

\_\_\_\_\_ initial here

Upon the company's receipt of this signed notice, if may require that certain information and documents be produced. For example, a survey, inspection, lien waivers, affidavits, financial statements, etc. may be requested. The information requested will vary depending upon what additional coverage you have requested, the insurer's guidelines for issuing such coverage and the particular transaction involved. Providing this information and examining it may extend the length of time needed to close and to prepare your title policy. TO AVOID DELAYS YOU ARE REQUESTED TO FILL OUT, SIGN AND RETURN THIS NOTICE TO THE COMPANY AS SOON AS POSSIBLE, ESPECIALLY IF YOU WANT ANY OF THE ADDITIONAL COVERAGES.

If you need further information concerning cost or requirements for obtaining the coverages only, you should call the Company at the telephone number given at the beginning of this Notice. IF YOU DO NOT UNDERSTAND THE ADDITIONAL COVERAGES, OR WANT TO KNOW IF YOU NEED THESE COVERAGES, YOU ARE ENCOURAGED TO SEEK AN ATTORNEY'S ADVICE. THE CLOSING OFFICER AND THE COMPANY'S PERSONNEL ARE NOT REQUIRED AND MAY NOT BE QUALIFIED TO ANSWER SUCH QUESTIONS.

Purchaser(s) \_\_\_\_\_  
Date \_\_\_\_\_

[6-16-86...4-3-95; 13.14.18.54 NMAC - Rn, 13 NMAC 14.7.E.8 through 14.7.E.11, 5-15-00; 13.14.18.54 NMAC - Rn, 13.14.18.48 NMAC & A, 8-1-08; A, 8-17-09]

**13.14.18.89 NM FORM 67: ACCESS AND ENTRY ENDORSEMENT:**

Access and Entry Endorsement Attached to Policy No. Issued By Blank title Insurance Company [NM Form 67; ALTA Form 17]

The company hereby insures against loss or damage sustained by the insured if, at date of policy: (i) the land does not abut and have both actual vehicular and pedestrian access to and from [(insert name of street, road, or highway)] (the "street"), (ii) the street is not physically open and publicly maintained, or (iii) the insured has no right to use existing curb cuts or entries along that portion of the street abutting the land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the date of policy, or (iv) increase the amount of insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Dated: \_\_\_\_\_  
\_\_\_\_\_] Witness clause optional

BLANK TITLE INSURANCE COMPANY

BY \_\_\_\_\_  
Authorized Signatory

[13.14.18.89 NMAC - Rn, 13.14.18.80 NMAC, 8-1-08; A, 8-17-09]

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

This is an amendment to 14.5.2, Sections 7 and 19, effective 09-02-09.

**14.5.2.7 DEFINITIONS:**

A. CID rules means sections 14.5 through 14.10 NMAC.

B. Commercial means a structure that is classified as having one of the following uses identified in the New Mexico commercial building code: assembly, business, educational, institutional, mercantile, storage or utility.

C. Industrial means a structure that is classified in the New Mexico commercial building code as having a factory or industrial use. Structures, of which a portion is classified as commercial as that term is defined in this rule, will be treated as industrial structures.

[14.5.2.7 NMAC - N, 09-02-09]

**14.5.2.19 ANNUAL PERMIT:**

[A. An annual permit may be obtained in accordance with CHLA Section 60-13-46.

B. The electrical and/or mechanical journeyman who qualifies for an annual permit holder shall be a full-time employee of such permit holder.

C. At regular intervals, the inspector having jurisdiction shall visit all buildings and premises where work is being done under an annual permit and shall

inspect all work done under such permit since the date of his last visit. He shall issue a certificate of approval for such work as is found to be in conformity with applicable code and these rules after payment of all required fees.

D. An annual permit holder who fails to keep a complete and accurate record of all work done under his annual permit shall forfeit the right to such annual permit, shall turn it in to the division upon demand, and shall not be eligible to apply for another annual permit for one (1) year thereafter.

E. An annual permit shall expire twelve (12) months from the date of issuance.]

A. Industrial.

(1) Types and scopes.

(a) ERMI. Electrical R/M - industrial permits. The scope of this permit is: repair or maintenance performed on existing electrical systems in industrial facilities. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved electrical installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved electrical installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of an electrical installation or any portion thereof.

(b) MRMI. Mechanical and plumbing R/M - industrial permits. The scope of this permit is repair or maintenance performed on existing mechanical / plumbing systems in commercial facilities. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved mechanical / plumbing installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved mechanical / plumbing installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of a mechanical / plumbing installation or any portion thereof.

(c) General construction repair and maintenance work that is required as a direct consequence of, or that is necessary to, work performed pursuant to an R/M industrial permit is authorized under these permits. All such general construction work must be reported pursuant to Paragraph (6) of Subsection A of 14.5.2.19 NMAC.

and whether general construction work is covered by an R/M industrial permit will be determined by the division. General construction work that is not covered by an R/M industrial permit will subject the permit holder to penalties as provided in the act and the CID rules.

**(2) Issuance.** R/M industrial permits may be issued to:

(a) an industrial entity duly authorized to do business in New Mexico; and;

(b) a licensed contractor holding one of the following classifications of license and who has a written contract with an industrial entity to perform work covered by an R/M industrial permit:

(i) for an ERMI permit: EE98;

(ii) for an MRMI permit: MM1, 2, 3, 4 and MM98;

(c) work to be performed under an R/M industrial permit may only be performed by a journeyman, properly certified by the division in the classification of work to be performed pursuant to the permit, who is an employee of the authorized entity, or of the licensee, to whom the permit was issued.

**(3) Duration.**

(a) R/M industrial permits are valid for 12 months from the date of issuance, are not renewable. ERMI and MRMI permits automatically expire on the first day of the thirteenth month after the month of issuance.

(b) Suspension, cancellation, revocation. See 14.5.2.13 NMAC of this rule.

(c) Expiration and deactivation of permit. See 14.5.2.14 NMAC of this rule.

**(4) Denial.** See 14.5.2.15 NMAC of this rule.

**(5) Failure to obtain permit.** See 14.5.2.16 NMAC of this rule.

**(6) Report log.** All work performed pursuant to an R/M industrial permit must be recorded by the permit holder in a log that contains, at a minimum, the following information:

(a) The location of the work with sufficient specificity that an inspector can locate the work.

(b) The date the work was performed.

(c) A description of the work performed. If tool replacement was performed, the identifying information for each tool replaced and for the new tool.

(d) The name of the individual who performed the work and the individual's journeyman classification and certificate number.

(e) In the case of tool exchange, a copy of the design or installation plan for the proposed exchange, which has been approved and stamped by a professional engineer who is properly licensed by the state of New Mexico.

(f) The entity authorization number, or the contractor license number, to whom the permit covering the work was issued.

**(7) Inspections.** All work performed under an R/M industrial permit is subject to inspection by CID and must comply with all applicable codes.

(a) CID inspectors will inspect the work covered by an annual permit at regular intervals.

(b) If the work inspected is not recorded fully and accurately on the log, the annual permit is subject to forfeiture and the holder may not be eligible to apply for another annual permit for one year thereafter.

**(8) Limitation.** Industrial R/M permits may not be issued by a municipality, a county or any other political subdivision of the state.

**B. Commercial.**

**(1) Types and scopes:**

(a) ERMC. Electrical R/M-commercial permit. The scope of this permit is repair or maintenance performed on existing electrical systems in commercial facilities. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved electrical installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved electrical installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of an electrical installation or any portion thereof.

(b) MRMC Mechanical and plumbing R/M - commercial permits. The scope of this permit is: repair or maintenance performed on existing mechanical / plumbing systems in commercial facilities. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved mechanical / plumbing installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved mechanical / plumbing installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of a mechanical / plumbing installation or any portion thereof.

(c) General construction repair and maintenance work that is required as a direct consequence of, or that is necessary to, work performed pursuant to an R/M commercial permit is authorized under these permits.

All such general construction work must be reported pursuant to Paragraph (6) of Subsection B of 14.5.2.19 NMAC, below), and whether general construction work is covered by an R/M commercial permit will be determined by the division. General construction work that is not covered by an R/M commercial permit will subject the permit holder to penalties as provided in the act and the CID rules.

**(2) Issuance.** R/M commercial permits may be issued to:

(a) a commercial entity duly authorized to do business in New Mexico; and;

(b) a licensed contractor holding one of the following classifications of license and who have a written contract with a commercial entity to perform work covered by an R/M commercial permit:

(i) for an ERMC permit: EE98;

(ii) for an MRMC permit: MM 1, 2, 3, 4 and MM98;

(c) work to be performed under an R/M commercial permit may only be performed by a journeyman, properly certified by the division in the classification of work to be performed pursuant to the permit, who is an employee of the authorized entity, or of the licensee, to whom the permit was issued.

**(3) Duration.**

(a) R/M commercial permits are valid for 12 months from the date of issuance, are not renewable. ERMC and MRMC permits automatically expire on the first day of the thirteenth month after the month of issuance.

(b) Suspension, cancellation, revocation. See 14.5.2.13 NMAC of this rule.

(c) Expiration and deactivation of permit. See 14.5.2.14 NMAC of this rule.

**(4) Denial.** See 14.5.2.15 NMAC of this rule.

**(5) Failure to obtain permit.** See 14.5.2.16 NMAC of this rule.

**(6) Report log.** All work performed pursuant to an R/M commercial permit must be recorded by the permit holder in a log that contains, at a minimum, the following information:

(a) The location of the work with sufficient specificity that an inspector can locate the work.

(b) The date the work was performed.

(c) A description of the work performed.

(d) The name of the individual who performed the work.

(e) The entity authorization number, or the contractor license number, to whom the permit covering the work was issued.

**(7) Inspections.** All work

performed under an R/M commercial permit is subject to inspection by CID and must comply with all applicable codes.

(a) CID inspectors will inspect the work covered by an annual permit at regular intervals.

(b) If the work inspected is not recorded fully and accurately on the log, the annual permit is subject to forfeiture and the holder may not be eligible to apply for another annual permit for one year thereafter.

**(8) Limitation.** Commercial R/M permits may not be issued by a municipality, a county or any other political subdivision of the state.

[14.5.2.19 NMAC - Rp, 14.5.2.10 NMAC, 7-1-04; A, 09-02-09]

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

**This is an amendment to 14.5.5 NMAC Section 14, effective 09-02-09.**

**14.5.5.14 MISCELLANEOUS FEES:**

**A. Certificate of qualification.** The fee for the issuance of a certificate of qualification shall be \$6.00, inclusive of gross receipts tax.

**B. Replacement Fees.**  
(1) The fee for the replacement of a certificate of qualification shall be \$6.00, inclusive of gross receipts tax.

(2) The fee for the replacement of a contractor's license shall be \$6.00, inclusive of gross receipts tax.

(3) The fee for the replacement of a certificate of competence shall be \$6.00, inclusive of gross receipts tax.

(4) The fee for additional contractor's wallet cards (beyond the two initially issued) shall be \$6.00 for each such card, inclusive of gross receipts tax.

**C. Photocopies.** The fee for photocopies of documents shall be \$.25 per page.

**D. Certified Photocopies.** The fee for certified copies of documents shall be \$.50 per page.

**E. Modular Approval.** The fee for modular approval shall be \$5.00 per floor plan, or \$25.00, whichever is higher.

**F. Manufactured Commercial Plan Review.** The fee for review of plans for manufactured commercial units shall be \$50.00 for each unit.

**G. Reinspections.** A fee of \$37.50 for re-inspection shall be paid when an inspection is requested and the structure

either fails the inspection, the structure is not ready for the inspection and/or the inspector is required to return for an inspection for any other reason.

**H. Annual permit fees.** The fee for an annual permit is [~~\$25.00:~~] \$100.00.

**I. Homeowner permit fees.** The following fees are in addition to the regular permit fees:

(1) The fee for a homeowner's permit for the construction of a new residence or for a major addition or remodel of an existing residence is \$200.00.

(2) The fee for a homeowner's permit for construction of a lesser nature shall be calculated pursuant to 14.5.4.11 NMAC, with a minimum fee of \$25.00.

(3) A fee of \$25.00 for either an electrical or mechanical examination required in connection with electrical or mechanical work performed by a homeowner under a homeowner's permit issued pursuant to 14.5.3 NMAC, Permits.

**J. Reactivation of permit.** CID may assess a fee for the reactivation of a suspended permit in an amount equal to one half (1/2) the amount of the original permit fee.

[14.5.5.14 NMAC - Rp, 14.5.5.8 NMAC, 14.7.2.10 NMAC, 14 NMAC 9.2.I 100, 14 NMAC 9.2.II 100, 7-1-04; A, 1-1-08; A, 09-02-09]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
PRIVATE INVESTIGATIONS  
ADVISORY BOARD**

**This is an amendment to 16.48.2 NMAC Section 16, Effective 08/30/09.**

**16.48.2.16 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A POLYGRAPH EXAMINER LICENSE:**

**A.** The department shall issue a license as a polygraph examiner to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

(1) proof of age indicating applicant is at least 18 years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;

(3) proof of a high school diploma

or its equivalent;

(4) proof of graduation from an accredited polygraph examiners course approved by the department; and

~~(6)~~ (5) proof of:

(a) completing a probationary operational competency period and passing an examination of ability approved by the department to practice polygraphy; or

(b) proof of holding, for a minimum of two (2) years immediately preceding the date of application, a current active license to practice polygraphy in another jurisdiction whose standards are equal to or greater than those in New Mexico; the applicant must have no pending disciplinary actions and no formal disciplinary actions issued against the license in the last five (5) years.

**B.** Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) Fingerprints shall be taken:  
(a) under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) [~~above~~] of Paragraph (2) of this subsection.

(3) Completed fingerprint cards shall be submitted to the department with a check, money order, cashier's check or credit card for the prescribed fee and made out to the private investigations advisory board.

(4) The department may issue a provisional license until an applicant's background check has been successfully completed.

**C. Probationary operational competency period.**

(1) Under successful completion of a written examination, a provisional license may be issued.

(2) During the probationary period, consisting of at least six (6) months, the polygraph examinations administered by the provisional licensee shall be reviewed for operational competency by a licensed polygraph examiner appointed by a board member or the superintendent to serve as a sponsor for the provisional licensee. During the probationary period, the provisional licensee must conduct a minimum of thirty

(30) polygraph examinations, a minimum of five (5) of which must be examinations, two (2) of the "specific" examinations, and three (3) of the "screening type" examinations must be performed in the presence of his or her sponsor, or recorded in their entirety for review by the sponsor or the board member. In the case of an applicant who conducts only "specific" examinations, a minimum of (5) "specific" examinations must be conducted in the presence of his or her sponsor, or recorded in their entirety for review by the sponsor or the board member.

(3) The sponsor appointed shall submit a progress report regarding the progress of the provisional licensee every sixty days on forms provided by the board.

(4) If an unsatisfactory report is submitted, the board member shall review the polygraph examinations administered by the provisional licensee for operational competency. Upon such review, the board member at his or her discretion may revoke the provisional license or take such action as it deems necessary to assure operational competency. Any revocations under this subsection shall be subject to the Uniform Licensing Act, Section 61-1-1 et. seq., NMSA 1978 Comp.

(5) The board member may at any time review the polygraph examinations administered by the provisional licensee for operational competency for any reason.

[16.48.2.16 NMAC - Re-pr & A, 16.48.2.16 NMAC, 09/24/08; A, 08/30/09]

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**End of Adopted Rules Section**

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## Submittal Deadlines and Publication Dates 2009

<b>Volume XX</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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
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Issue Number 20	October 16	October 30
Issue Number 21	November 2	November 13
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

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