

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 5 PETROLEUM STORAGE TANKS**  
**PART 11 LENDER LIABILITY**

20.5.11.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.  
[20.5.11.1 NMAC - Rp, 20 NMAC 5.11.100, 8/15/03]

20.5.11.2 SCOPE: This part applies to all storage tank systems in this state-except as provided in Subsections B and C of 20.5.1.2 NMAC.  
[20.5.11.2 NMAC - Rp, 20 NMAC 5.11.101, 8/15/03]

20.5.11.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-1-14, and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15.  
[20.5.11.3 NMAC - Rp, 20 NMAC 5.11.102, 8/15/03]

20.5.11.4 DURATION: Permanent.  
[20.5.11.4 NMAC - Rp, 20 NMAC 5.11.103, 8/15/03]

20.5.11.5 EFFECTIVE DATE: August 15, 2003, unless later date is indicated in the bracketed note at the end of a section.  
[20.5.11.5 NMAC - Rp, 20 NMAC 5.11.104, 8/15/03]

20.5.11.6 OBJECTIVE: This part is adopted to limit the regulatory obligations of lending institutions and other persons who hold a security interest in a storage tank system, or in real estate containing a storage tank, or that acquire a title or deed to a storage tank or a facility or property on which a storage tank is located.  
[20.5.11.6 NMAC - Rp, 20 NMAC 5.11.105, 8/15/03]

20.5.11.7 DEFINITIONS: The definitions in 20.5.1 NMAC apply to this part. In addition, when used in this part, the following terms shall have the meanings given below:

- A. "Storage tank technical standards," as used in this part, refers to the requirements of 20.5.4, 20.5.5, 20.5.6 and 20.5.8 NMAC and 20.5.7.700 through 20.5.7.702 NMAC.
- B. Petroleum production, refining, and marketing.
  - (1) "Petroleum production" means the production of crude oil or other forms of petroleum (as defined in 20.5.1.7 NMAC) as well as the production of petroleum products from purchased materials.
  - (2) "Petroleum refining" means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.
  - (3) "Petroleum marketing" means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.
- C. "Indicia of ownership" means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.
- D. A "holder" is a person who maintains indicia of ownership primarily to protect a security interest in a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

E. A "borrower," "debtor," or "obligor" is a person whose petroleum storage tank or storage tank system or facility or property on which the petroleum storage tank or storage tank system is located is encumbered by a security interest. These terms may be used interchangeably.

F. "Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) "Security interest" means an interest in a petroleum storage tank or storage tank system or in the facility or property on which a petroleum storage tank or storage tank system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in a storage tank or storage tank system or in the facility or property on which the storage tank or storage tank system is located, for the purpose of securing a loan or other obligation.

(2) "Primarily to protect a security interest," as used in this part, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

G. "Operation" means, for purposes of this part, the use, storage, filling, or dispensing of petroleum contained in a storage tank or storage tank system.

[20.5.11.7 NMAC - Rp, 20 NMAC 5.11.1100, 8/15/03]

20.5.11.8 to 20.5.11.1099 [RESERVED]

20.5.11.1100 PARTICIPATION IN MANAGEMENT: The term "participating in the management of a storage tank or storage tank system" means that the holder is engaging in decisionmaking control of, or activities related to, operation of the storage tank or storage tank system, as defined herein.

A. Actions that are participation in management.

(1) Participation in the management of a storage tank or storage tank system means, for purposes of this part, actual participation by the holder in the management or control of decisionmaking related to the operation of a storage tank or storage tank system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control storage tank or storage tank system operations. A holder is participating in the management of the storage tank or storage tank system only if the holder either:

(a) Exercises decisionmaking control over the operational (as opposed to financial or administrative) aspects of the storage tank or storage tank system, such that the holder has undertaken responsibility for all or substantially all of the management of the storage tank or storage tank system; or

(b) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

(2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in a storage tank or storage tank system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in 20.5 NMAC.

B. Actions that are not participation in management pre-foreclosure.

(1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subpart. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the storage tank or storage tank system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such

action considered to be participating in the management of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located.

(2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this part. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(a) Policing the security interest or loan.

(i) A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the storage tank or storage tank system as provided in Subsection A of this section. Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the storage tank or storage tank system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(ii) Policing activities also include undertaking by the holder of storage tank environmental compliance actions and voluntary environmental actions taken in compliance with 20.5 NMAC, provided that the holder does not otherwise participate in the management or daily operation of the storage tank or storage tank system as provided in Subsection A of this section and 20.5.11.1102 NMAC. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of a storage tank or storage tank system, storage tank upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions shall do so in compliance with the applicable requirements in 20.5 NMAC. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the storage tank or storage tank system.

(b) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the storage tank or storage tank system as provided in Subsection A of this section. For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

C. Foreclosure on a storage tank or storage tank system or facility or property on which a storage tank or storage tank system is located, and participation in management activities post-foreclosure.

(1) Foreclosure.

(a) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this subpart, the term "foreclosure" means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the storage tank, storage tank system, storage tank facility, and property on which the storage tank or storage tank system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the storage tank, storage tank system, storage tank facility, and property on which the storage tank or storage tank system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, in a reasonably expeditious manner, using whatever

commercially reasonable means are relevant or appropriate with respect to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in Subsection A of this section) prior to or after foreclosure.

(b) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner a storage tank or storage tank system or facility or property on which the storage or storage tank system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, or may employ the means specified in Paragraph (2) of Subsection C of this section. A holder that outbids, rejects, or fails to act upon a written bona fide, firm offer of fair consideration for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, as provided in Paragraph (2) of Subsection C of this section, is not considered to hold indicia of ownership primarily to protect a security interest.

(2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), a storage tank or storage tank system or facility or property on which the storage tank or or storage tank system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located. A holder may also arrange for an existing or new operator to continue or initiate operation of the storage tank or storage tank system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this part.

(a) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the storage tank or storage tank system or the facility or property on which the storage tank or storage tank system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located. For purposes of this provision, the 12-month period begins to run from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the storage tank or storage tank system, the 12-month period begins to run from the date on which the holder first acquires either title to or possession of the secured storage tank or storage tank system, or facility or property on which the storage tank or storage tank system is located. In the case of foreclosure on an AST or AST system or facility or property on which an AST or AST system is located, no 12 month period may begin to run until August 15, 2003.

(b) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the storage tank or storage tank system or the facility or property on which the storage or storage system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured storage or storage system or facility or property on which the storage or storage system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(i) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the storage or storage tank system or facility or property on which the storage tank or storage tank system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in

the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the storage or storage system or facility or property on which the storage tank or storage tank system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an storage or storage system or facility or property on which the storage tank or storage tank system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located), and corrective action costs incurred under 20.5.7 or 20.5.12 NMAC or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this paragraph.

(ii) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt, a written, bona fide, firm offer of fair consideration for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located received at any time after six months following foreclosure, as defined in Subsection C of this section. A "written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the storage tank or storage tank system, storage tank facility and property on which the storage tank or storage tank system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the storage tank or storage tank system, the six-month period begins to run from the date on which the holder first acquires either title to or possession of the secured storage tank or storage tank system, or facility or property on which the storage tank or storage tank system is located. In the case of foreclosure on an AST or AST system or facility or property on which an AST or AST system is located, no six month period may begin to run until August 15, 2003

(3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located when undertaking actions under 20.5 NMAC, provided that the holder does not otherwise participate in the management or daily operation of the storage tank or storage tank system as provided in Subsection A of this section and in 20.5.11.1102 NMAC. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of a storage tank system, storage tank upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions shall do so in compliance with the applicable requirements in 20.5 NMAC. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the storage tank or storage tank system.

[20.5.11.1100 NMAC - Rp, 20 NMAC 5.11.1100, 8/15/03]

20.5.11.1101 OWNERSHIP OF A STORAGE TANK OR STORAGE TANK SYSTEM OR FACILITY OR PROPERTY ON WHICH A STORAGE TANK OR STORAGE TANK SYSTEM IS LOCATED: A holder is not an "owner" of a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located for purposes of compliance with the storage tank technical standards as defined in Subsection A of 20.5.11.7 NMAC, the corrective action requirements under 20.5.7 and 20.5.12 NMAC, and the financial responsibility requirements under 20.5.9 NMAC, provided the person:

A. does not participate in the management of the storage tank or storage tank system as defined in 20.5.11.1100 NMAC; and

B. does not engage in petroleum production, refining, and marketing, as defined in 20.5.11.7 NMAC. [20.5.11.1101 NMAC - Rp, 20 NMAC 5.11.1100, 8/15/03]

20.5.11.1102 OPERATING A STORAGE TANK OR STORAGE TANK SYSTEM:

A. Operating a storage tank or storage tank system prior to foreclosure. A holder, prior to foreclosure, as defined in Subsection C of 20.5.11.1100 NMAC, is not an "operator" of a petroleum storage tank or storage tank system for purposes of compliance with the storage tank technical standards as defined in 20.5.11.7 NMAC, the corrective action requirements under 20.5.7 and 20.5.12 NMAC, and the financial responsibility requirements under 20.5.9 NMAC, provided that the holder is not in control of or does not have responsibility for the daily operation of the storage tank or storage tank system.

B. Operating a storage tank or storage tank system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in Subsection C of 20.5.11.1100 NMAC, acquires a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located.

(1) A holder is not an "operator" of a petroleum storage tank or storage tank system for purposes of compliance with 20.5 NMAC if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the storage tank or storage tank system, and who can be held responsible for compliance with applicable requirements of 20.5 NMAC.

(2) If another operator does not exist, as provided for under Paragraph (1) of Subsection B of this section, a holder is not an "operator" of the storage tank or storage tank system, for purposes of compliance with the storage tank technical standards as defined in 20.5.11.7 NMAC, the corrective action requirements under 20.5.7 and 20.5.12 NMAC, and the storage tank financial responsibility requirements under 20.5.9 NMAC, provided that the holder:

(a) empties all of its known storage tanks and storage tank systems within 60 calendar days after foreclosure or, in the case of ASTs, within 60 calendar days after August 15, 2003, whichever is later, or another reasonable time period specified by the department, so that, in the case of both USTs and ASTs, no more than two and a half centimeters (one inch) of residue, or three-tenths percent by weight of the total capacity of the storage tank system, remains in the system; leaves vent lines open and functioning; caps and secures all other lines, pumps, manways, and ancillary equipment; and, for ASTs, disconnects and caps all associated piping from the AST; and

(b) empties those storage tanks and storage tank systems that are discovered after foreclosure within 60 calendar days after discovery or, in the case of ASTs, within 60 calendar days after August 15, 2003, whichever is later, or another reasonable time period specified by the department, so that, in the case of both ASTs and USTs, no more than two and a half centimeters (one inch) of residue, or three-tenths percent by weight of the total capacity of the storage tank system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and, for ASTs, disconnects and caps all associated piping from the AST.

(3) If another operator does not exist, as provided for under Paragraph (1) of Subsection B of this section, in addition to satisfying the conditions under Paragraph (2) of Subsection B of this section, the holder shall either:

(a) permanently close the storage tank or storage tank system in accordance with 20.5.8.801 through 20.5.8.804 NMAC, except Subsection B of 20.5.8.802 NMAC; or

(b) temporarily close the storage tank or storage tank system in accordance with the following applicable provisions of 20.5.8.800 NMAC:

(i) continue operation and maintenance of corrosion protection in accordance with 20.5.5.501 NMAC;

(ii) report suspected releases to the department; and

(iii) conduct a site assessment in accordance with Subsection A of 20.5.8.802 NMAC if the storage tank system is temporarily closed for more than 12 months and the storage tank system does not meet either the performance standards in 20.5.4.400 and 20.5.4.401 NMAC for new storage tank systems or, for AST systems, the upgrading requirements in 20.5.4.405 NMAC, except that the spill and overfill equipment requirements do not have to be met. The holder shall report any suspected releases to the department. For purposes of this provision as it affects USTs, the 12-month period begins to run from the date on which the UST system is emptied and secured under Paragraph (2) of Subsection B of this section. For purposes of this provision as it affects ASTs, the 12-month period begins to run from August 15, 2003, or from the date on which the AST system is emptied and secured under Paragraph (2) of Subsection B of this section, whichever is later.

(4) The storage tank system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located. Once a subsequent purchaser acquires marketable title to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, the purchaser shall decide whether to operate or close the storage tank or storage tank system in accordance with applicable requirements in 20.5 NMAC.  
[20.5.11.1102 NMAC - Rp, 20 NMAC 5.11.1100, 8/15/03]